

INVESTIGATIVE REPORT

Subject: Arrest of Dr. Antwi Akom
Submitted by: Hon. Willie L. Brown and
Louise H. Renne
Date: March 13, 2006

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | INTRODUCTION | 1 |
| II. | BACKGROUND | 3 |
| III. | INVESTIGATIVE SCOPE AND PROCEDURE | 4 |
| A. | Persons Interviewed | 6 |
| B. | Documents Reviewed by the Investigators..... | 7 |
| 1. | Documents Produced by San Francisco State’s Department of Public Safety | 8 |
| 2. | Additional Documents Obtained For the Investigation | 11 |
| C. | Investigative Steps | 13 |
| IV. | FACTUAL FINDINGS | 23 |
| A. | The University’s Policy Regarding Entering Campus Buildings After Closure | 23 |
| B. | November 2004 Incident Between Dr. Akom and Campus Police – One Year Before The October 25, 2005 Incident..... | 25 |
| 1. | Officer Liddi’s Description of the Incident | 26 |
| 2. | Memo from Lieutenant Don Young Regarding November 2004 Incident | 27 |
| 3. | Dr. Akom’s Description of the November 2004 Incident..... | 28 |
| C. | The Technology Infrastructure Services (TIS) Project and The Presence and Proscribed Duties and Authority of the Wackenhut Security Guards | 29 |
| 1. | Security Guard Authority..... | 29 |
| 2. | University efforts to alert campus community to presence on campus of and duties and authority of Wackenhut security guards | 36 |
| D. | The Incident on October 25, 2005 | 43 |
| 1. | Dr. Akom’s Attempt to Enter The Ethnic Studies Building After Hours And His Initial Contact with the Security Guard..... | 43 |

| | | |
|----|---|----|
| 2. | The Call to the Campus Police and the Resulting Dispatch of Information to Officers in the Field..... | 49 |
| 3. | The Varying Accounts of Dr. Akom’s Initial Interaction with Officer Rodgers..... | 51 |
| | a. Officer Rodgers..... | 51 |
| | b. Dr. Akom | 55 |
| | c. Eyewitness #2 | 55 |
| | d. Eyewitness #3 | 57 |
| | e. Eyewitness #4 | 58 |
| | f. Eyewitness #5 | 59 |
| | g. Eyewitness #6 | 61 |
| | h. Eyewitness #1 | 62 |
| | i. Eyewitness #7 | 64 |
| | j. Two Possible Versions of Events Based on the Witness Statements..... | 65 |
| 4. | The Sequence of Events after the Arrival of the Back-Up Officers | 67 |
| 5. | The Investigative Tactics of the Department of Public Safety | 70 |
| E. | DPS’ Policy on Racial Profiling and Training..... | 72 |
| F. | Incidents When Campus Police Or Security Guards Did Not Ask For Identification From Faculty Or Students While Buildings Were Closed. | 73 |
| | 1. Eleanor Taylor | 74 |
| | 2. Austin Long-Scott..... | 75 |
| | 3. Saul Steier | 75 |
| | 4. Dorothy Tsuruta | 75 |
| | 5. Carel Bertram..... | 76 |
| | 6. Michael Hornbuckle..... | 78 |
| G. | Alleged Incidents of Differing Treatment of Minority Faculty And Students by Campus Police..... | 79 |
| | 1. The Incident Involving a Student of the June Jordan School of Equity | 79 |
| | 2. Incidents Reported by Professor Shenoda | 80 |
| | 3. Incidents Reported to the Investigators by Dorothy Tsuruta | 81 |
| H. | How The Department of Public Safety Currently Handles Allegations of Wrongdoing Against Its Officers..... | 82 |

| | | |
|-----|--|-----|
| V. | CONCLUSIONS..... | 83 |
| A. | Preliminary Conclusions:..... | 83 |
| 1. | The University’s Policy Regarding Entry Into Buildings After They Are Closed Was Not Adequately Communicated Prior To October 25, 2005..... | 83 |
| 2. | Dr. Akom Had Knowledge About the University’s Policies Regarding Building Closure Times And The Requirement To Show Identification. | 84 |
| 3. | The Presence of and Role of The Security Guards Relating To The TIS Project Was Not Adequately Communicated to Members of The University Community Prior To October 25, 2005. | 85 |
| 4. | Reported Inconsistent Practice Relating To Requests for Identification. | 86 |
| 5. | Possible Differing Treatment of Minority Faculty and Students by Campus Police. | 86 |
| B. | Conclusions Regarding The Events of October 25, 2005 Which Culminated in the Arrest of Dr. Akom: | 87 |
| 1. | Dr. Akom’s Interaction with the Security Guard..... | 87 |
| 2. | The Dispatcher Did Not Mention Dr. Akom’s Race, but May Have Inadvertently Communicated Inaccurate Information to Officers in the Field. | 91 |
| 3. | Dr. Akom May Have Told Officer Rodgers He Was A Professor Before Any Physical Altercation Occurred, And Officer Rodgers Did Not Ask Dr. Akom To Show His Identification. | 97 |
| 4. | Although It May Have Been Helpful Had Officer Rodgers Activated His Digital Audio Recorder Earlier, It Is Not Clear That He Was In A Position To Do So..... | 97 |
| 5. | Dr. Akom’s Conduct upon the Arrival of the Back-Up Officers.. | 98 |
| 6. | There Is No Evidence of Racial Profiling..... | 98 |
| VI. | POLICY RECOMMENDATIONS | 100 |

I. INTRODUCTION

This investigation was conducted at the request of San Francisco State University President Robert Corrigan. On October 31, 2005, Professor Corrigan appointed the Hon. Willie L. Brown, Jr. and Louise H. Renne to lead an independent investigation of an incident that occurred at approximately 11:00 p.m. on October 25, 2005 at the Ethnic Studies/Psychology building. At that time and place, Dr. Antwi Akom, a faculty member in the Africana Studies department, was arrested by campus police for allegedly committing battery on a campus police officer and resisting arrest.

The Hon. Willie L. Brown is the former Mayor of San Francisco and Speaker of the California Assembly. Louise H. Renne is the former City Attorney of San Francisco. The investigators assigned to the task were Nikki Hall, an attorney with the law firm of Renne Sloan Holtzman Sakai LLP and George M. Cothran, a licensed private investigator employed by the same law firm. Ms. Hall and Mr. Cothran reported to Ms. Renne and Mr. Brown throughout their investigation.

The investigators reviewed the seven written eyewitness statements prepared at the request of the campus police the evening of Dr. Akom's

arrest and the DVD recordings of campus police interviews with five of seven eyewitnesses conducted the week following the arrest. The investigators interviewed 27 individuals with information relevant to the investigation and made extensive and repeated efforts to contact and independently interview all seven eyewitnesses to the events culminating in the arrest of Dr. Akom. Three of the eyewitnesses participated in interviews with the investigators. Four of the eyewitnesses, three of whom were employed by University contractors at the time of the incident, refused to talk with the independent investigation despite exhaustive attempts to elicit their cooperation. The independent investigation did not have the authority to compel the testimony of the eyewitnesses.

The most significant obstacle to discovering all relevant facts, however, was the fact that Dr. Akom, acting on the advice of his attorneys, declined to be interviewed. The conclusion of the independent investigation was delayed in the hope that Dr. Akom would be able to meet with the investigators; however, that has not occurred. Consequently, this report is based on documentary evidence gathered , as well as the recollections of those individuals who agreed to cooperate with the investigation, and were either present at the scene of the incident or are otherwise knowledgeable about issues and events relevant to this report.

II. BACKGROUND

On October 25, 2005 San Francisco State University was in the midst of a large public works project, the Technology Infrastructure Services (TIS) project. The TIS project continues on campus to this day.

A main focus of the project was the installation of state-of-the-art data cabling in all the offices and classrooms at the University. The Ethnic Studies/Psychology building, where Dr. Akom maintains an office, was one of two university buildings undergoing TIS work in October 2005. (The other TIS work site was the Humanities building.) TIS work was and is conducted after hours, from 10 p.m. to 7 a.m. The last classes at the University end shortly before 10 p.m. The prime contractor on the TIS project is CH2M Hill, an engineering and construction firm. Consolidated CM is the construction management firm on the TIS project.

CH2M Hill was required as part of its contract with the University to provide its own private security force to safeguard work sites. CH2M Hill engaged the services of the Wackenhut Corporation, the second largest provider of security services in the world.

The authority of the Wackenhut security guards was limited to sites where TIS work was underway from 10 p.m. to 7 a.m. Security guards are

not peace officers and do not have any more authority to detain or arrest people than do average citizens under the laws of citizen arrest. The main duty of security guards, as proscribed by state law, is to observe and report activity to duly authorized law enforcement agencies.

The main security force at SFSU is the Department of Public Safety (DPS), which is a police force like any police department in any city of the state with the same powers and responsibilities. DPS officers, like those involved in the arrest of Dr. Akom, are trained at the same academies as cadets for the police forces in cities like San Francisco and have the same legal authority as city police officers. DPS officers receive the same training as cadets for the police forces in cities as governed by the California Commission on Peace Officer Standards and Training (POST), a state government agency.

III. INVESTIGATIVE SCOPE AND PROCEDURE

The investigative mandate was twofold: 1) to determine if members of the campus police force and/or a security guard employed by Wackenhut Security and assigned to a construction site on campus acted appropriately in

their encounters with Dr. Akom or whether they engaged in racial profiling¹ and 2) to recommend appropriate policy changes given the findings of the investigation.

In order to fulfill this mandate, it was necessary to obtain an understanding of the events of October 25, 2005 to determine whether officers of the SFSU Department of Public Safety, the private guard for Wackenhut Security, and/or Dr. Akom acted reasonably, appropriately, and in accordance with applicable laws and policies.

We also undertook to discover how effectively the University administration informed the campus community about the presence on campus of security guards associated with a Technology Infrastructure Services (TIS) project, as well as to understand the authorized powers and duties of those guards.

Also, as time permitted, the investigation sought to discover whether the private security guards and/or the campus police handled requests for identification in a discriminatory fashion.

¹ For the purposes of this inquiry, racial profiling is the exercise of legal authority upon a person based solely on a person's race absent any independent, incident-specific and race neutral bases for the exercise of that authority.

The investigation obtained evidence from interviews and document review. Twenty-seven (27) individuals were interviewed in the course of the investigation, as set forth below:

A. Persons Interviewed

| Interviewees | Date |
|---|---------------------|
| Kenneth Monteiro, Acting Dean of the College of Ethnic Studies | 11/14/05 |
| Eyewitness #7, San Francisco State undergraduate student ² | 11/18/05 |
| So Trinh, Building Coordinator for the College of Ethnic Studies | 11/21/05 |
| Michael Hornbuckle, former Building Coordinator for the College of Ethnic Studies | 11/28/05 |
| Jamie Newton, Professor in the Psychology department | 11/30/05 |
| Marina Abalakina, Professor in the Psychology Department | 11/30/05 |
| John Cleary, Building Coordinator and Director of Operations of the College of Behavioral and Social Sciences | 11/30/05 2/22/06 |
| David Gard, professor in the Psychology department | 11/30/05 |
| Jeff Cookston, professor in the Psychology department | 11/30/05 |
| Sacha Bunge, professor in the Psychology department | 11/30/05 |
| Matthew Shenoda, Professor in the Africana Studies department | 12/2/05 |
| Dorothy Tsuruta, Chair of the Africana Studies department | 12/2/05 |

² The identity of the eyewitnesses is being withheld in order to protect the privacy of the eyewitnesses.

| Interviewees | Date |
|--|------------------------------|
| Eyewitness #5, electrical contractor for PNS Communications | 12/5/05 |
| Jackie Pomies, Assistant to the Dean of the College of Humanities | 12/6/05 |
| Annette Speed, secretary for the Humanities Department | 12/6/05 |
| George Leonard, Professor in the Humanities department | 12/6/05 |
| Carel Bertram, Professor in the Humanities department | 12/6/05 12/7/05 |
| Eleanor Taylor, San Francisco State graduate student | 12/9/05 |
| Austin Long-Scott, Professor in the Journalism department | 12/13/05 |
| Saul Steier, Chair of the Humanities department | 12/14/05 |
| Barry Jodatian, project coordinator, SFSU Office of Capital Planning, Design, and Construction | 1/3/06 1/25/06 1/26/06 |
| Officer Brandon Rodgers | 1/6/06 |
| Dispatcher for Department of Public Safety | 1/6/06 |
| Sergeant Reginald Parson | 1/12/06 |
| Officer Brandon Broach | 1/13/06 |
| Eyewitness #1, security guard for Wackenhut Corporation | 1/24/06 |
| Jerry Lundquist, superintendent, CH2M Hill | 1/25/06 |

B. Documents Reviewed by the Investigators

The following documents were reviewed and relied upon in conducting the investigation and reaching conclusions.

1. **Documents Produced by San Francisco State's Department of Public Safety**

- Police Incident Report, including Supplemental Report Form(s), Continuation Report Form(s), CAD Incident Report and photographs.
- Letter dated October 26, 2005 from Department of Public Safety (DPS) Chief of Police, Kimberly Wible, to Alan Shapiro requesting that Professor Antwi Dr. Akom be released on his own recognizance.
- Documents pertaining to an admonishment of Professor Antwi Dr. Akom per Penal Code section 626.4 and the subsequent withdrawal of that admonishment.
- Written statements of Eyewitness #1 on October 26 and 27, 2005; police interviews of Eyewitness #1 on October 27 and 28, 2005 (including transcript and video of interviews.)
- Written statement of Eyewitness #2 on October 26, 2005 and police interview of Eyewitness #2 on November 1, 2005 (including transcript and video of interview.)
- Written statement of Eyewitness #3 on October 26, 2005 and police interview of Eyewitness #3 on October 30, 2005 (including transcript and video of interview.)

- Written statement of Eyewitness #4 on October 26, 2005 and police interview of Eyewitness #4 on October 28, 2005 (including transcript of telephone interview.)
- Written statement of Eyewitness #5 on October 26, 2005 and police interview of Eyewitness #5 on October 31, 2005 (including transcript and video of interview.)
- Written statement of Eyewitness #6 on October 26, 2005 and police interview of Eyewitness #6 on October 31, 2005 (including transcript and video of interview.)
- Written statement of Eyewitness #7 on October 26, 2005 and subsequent police contacts with Eyewitness #7 on October 30 and November 1, 2005 (including transcript of telephone interview on November 1.)
- Scene diagram signed by Officer Rodgers on November 1, 2005.
- Transcript of Officer Rodgers' digital audio recording from the night of October 25, 2005 (and audio recording.)
- Transcript of Officer Broach's digital audio recording from the night of October 25, 2005 (and audio recording.)

- Transcript of Sergeant Parson's digital audio recording from the night of October 25, 2005 (and audio recording.)
- Memorandum to Chief Wible from Commander Kirk Gaston regarding use of force analysis with respect to incident involving Dr. Akom.
- DPS policies on use of force, bias profiling, digital audio recorders, search and seizure, arrests/detention, prisoner transportation, arrest procedures and legal process, and key control.
- SFSU Policy on Closure of Campus Buildings.
- DPS training on racial profiling.
- Documents relating to after hours encounter in Ethnic Studies/Psychology building between Dr. Akom and DPS Officer Troy Liddi in November of 2004.
- Documents relating to new faculty orientation of Dr. Akom in August 2004.
- SFSU Faculty Manual.
- SFSU Campus Security Reports for 2004 and 2005.

- Documents relating to Dr. Akom not having an exterior door key and Dr. Akom's request on September 2, 2005 to be let into the building by DPS.
- DPS inquiries at Stanford, UC Berkeley and the University of Pennsylvania regarding Dr. Akom.
- Officer Rodgers' Worker's Compensation claim.
- Dispatch records (transcript and audio.)
- Eyewitness #1's cell phone records for the night of the incident.
- SFSU Police Codes document

2. Additional Documents Obtained For the Investigation

The following documents were obtained during the course of the investigation:

1. Email string provided by Kenneth Monteiro pertaining to the November 2004 incident between Dr. Akom and campus police.
2. Emails and flyers provided by Michael Hornbuckle relating to notices he sent to the faculty of the College of Ethnic Studies regarding the Technology Infrastructure Services (TIS) project.

3. Documents provided by CH2MHill, including the subcontract between CH2MHill and Wackenhut Security and the “Special Conditions” section of the contract between CH2MHill and SFSU.
4. December 15, 2005 Memorandum from Chief of Police, Kimberly Wible, written in response to investigators’ request for information regarding qualifications of campus police officers, recruitment and training of officers, and prior allegations of wrongdoing against campus police.
5. Documents provided by Barry Jodatian, SFSU Capital Planning, Design, and Construction project manager for the TIS project, and Patricia B. Bartscher, General Counsel for SFSU: a) timeline of meetings between university officials and employees prior to work in Ethnic Studies/Psychology building; b) emails to building coordinators from office of Vice President Administration & Finance regarding informational meeting for building coordinators prior to work in Ethnic Studies/Psychology building and information about project to be disseminated to building occupants; c) attachments to emails from Vice President Administration & Finance - Builder Users Fact Sheet and sample email to be sent to building occupants; d) minutes from May 2, 2005 meeting of university departments regarding CH2M Hill security plan; e) CH2M Hill Campus Security plan document.

C. Investigative Steps

During the investigation all DVD recordings of, and written transcripts of all SFSU Department of Public Safety interviews with eyewitnesses to, the events of October 25, 2005 were reviewed and analyzed.

The investigation also sought to independently identify and interview all eyewitnesses and key participants in the events of October 25, 2005. Investigators were successful in interviewing three eyewitnesses, including the Wackenhut security guard, and all three campus police officers involved in the incident. While the three campus police officers involved in the incident had a legal right to insist that their interviews remain confidential under provisions of the Penal Code, they waived this legal right and cooperated fully with the independent investigation, and they allowed their testimony to be incorporated into a public report. Similarly, the officers had a legal right to insist that their employer, the University, compel them to sit for interviews in order to shield themselves from any theoretical criminal liability that might result from their statements to the independent investigators. Again, the officers declined to avail themselves of that legal right and participated in the interviews voluntarily.

In November 2005, an interview with Dr. Akom was requested. Dr. Akom declined three separate requests for an interview made through his criminal defense attorneys, Michael Hinckely and John Keker, between November 2005 and March 2006.

Four eyewitnesses also refused to cooperate with the investigation. One is an employee of CH2MHill, the prime contractor on the telecommunications upgrade project; two are or were employees of PNS Communications, an electrical subcontractor on the telecommunications upgrade project; and one was a private citizen who had been authorized by campus police to participate in a “ride-along” with Officer Rodgers on the night of the incident. The eyewitnesses refused to return numerous voicemails left on multiple phones maintained and used by the eyewitnesses, and, in one case, to return repeated messages left with a spouse.³ The investigators requested the reluctant eyewitnesses’ job supervisors to encourage them to cooperate. The job supervisors agreed to do so, again to no avail. In one instance, investigators were unsure they had accurate contact information for one witness and sent an interview request in writing with a

³ Eyewitness #4 did call the investigators back on one occasion, leaving a voicemail alerting the investigators that he was in San Francisco on other business and could be interviewed on that day. Eyewitness # 2 gave the investigators an unreasonably short time frame to respond to the call before the Eyewitness #2 left the city. The investigators did not receive the voicemail until after Eyewitness # 2 had left the city. Follow up messages left with the witness were unreturned.

return receipt requested. The eyewitness signed and returned the receipt form acknowledging receiving the letter but refused to contact investigators. (As it turned out, the investigators had the correct contact information for that witness. The witness simply failed to respond.)

During the course of the investigation, it came to our attention that another employee of PNS Communications not listed in the police report may have witnessed key events. The investigators learned that subsequent to the events of October 25, the individual left the employment of PNS Communications. Attempts to reach the individual through PNS Communications, friends and co-workers were unsuccessful.

The digital audio recordings of the events of October 25, 2005 made by Officers Brandon Broach and Brandon Rodgers and Sgt. Reginald Parson were reviewed. The digital audio recording made by Sgt. Parson contains a detailed, voluntary statement made by Dr. Akom about what he alleges occurred on October 25, 2005. It is this statement which provides the primary basis for understanding Dr. Akom's version of what occurred October 25, 2005 in the Ethnic Studies/Psychology building.

The investigators reviewed dispatch recordings provided by the SFSU Department of Public Safety containing police communications the night of October 25 and the early morning of October 26, including the call initiated by the security guard to DPS regarding Dr. Akom's entry into the building, and the DPS dispatch information broadcast to officers in the field regarding the report of a "suspicious person" entering the building. The investigators interviewed the dispatcher to verify that the dispatch records turned over by campus police were accurate and complete.

We corresponded with CH2M Hill and Wackenhut to obtain documents explaining the specific scope of duties of the security guards assigned to the TIS project work sites. Wackenhut refused to produce any documents without a subpoena. CH2M Hill responded with documents reflecting contract language between the University and CH2M Hill and between CH2M Hill and Wackenhut. The investigators reviewed provisions of the contracts between the University and CH2M Hill, and between CH2M Hill and Wackenhut, regarding CH2M Hill's obligation to use security guards while performing after hours work and the duties of those guards. Investigators supplemented this document review with interviews with a CH2M Hill representative and a University official knowledgeable about

oral communications between the University and CH2M Hill regarding the authority and obligations of the Wackenhut security guards.

The investigators interviewed the representative of CH2M Hill, a staff member and administrator from the SFSU Office of Capital Planning, Design and Construction, college level information technology staff, and college level administrative staff to determine the method and extent of the University's dissemination to the campus of information relating to the TIS project. The inquiries were focused on what information was provided regarding the role of security guards and their powers and duties on campus.

The investigators sent emails to Kenneth Monteiro, the Dean of the College of Ethnic Studies, Kathleen Mosier, Chair of the Psychology Department, and Jackie Pomies, the Assistant Dean of the College of Humanities requesting that they circulate an email asking faculty and staff to contact the investigators if they had experiences with campus police or security guards assigned to construction sites on campus they felt were germane to this investigation. The Monteiro and Pomies emails were sent to all staff and faculty of the respective colleges on December 12, 2005. The language requested for the emails was as follows:

Colleagues:

I have been in contact with the independent investigators looking into the circumstances surrounding the October 25 arrest of Professor Antwi Dr. Akom of the Africana Studies Department. The investigators report to former San Francisco City Attorney and current San Francisco Police Commission President, Louise H. Renne, and Former San Francisco Mayor and Speaker of the California Assembly, Willie L. Brown Jr.

The investigators have asked me to circulate this email seeking information from any student, faculty or staff member regarding the following: a) the events of Oct. 25 leading up to and culminating in the arrest of Dr. Akom, and b) any information related to any experiences students, faculty or staff have had with security guards assigned to construction sites on campus or the campus police that they feel is germane to the investigation.

Thank you for your attention to this matter.

The email contained Hall's and Cothran's contact information.

The investigators asked Matthew McDearmid, the department manager for the Psychology Department, to distribute the investigators' contact information to graduate student teaching assistants who instructed night classes during the Fall semester. McDearmid reported to the investigators that he had distributed the contact information to the appropriate individuals.

The investigators asked Chair Mosier to query students involved in her graduate research projects if they routinely stayed in the Ethnic Studies/Psychology Building after hours and, if so, to have those individuals contact the investigators. She agreed to do so.

The investigators left messages with or spoke to department managers for the Journalism Department and the Humanities Department and interviewed several professors in the Psychology Department in an effort to identify professors, staff members, or students who taught night classes or for other reasons might regularly be present in the Humanities and/or the Ethnic Studies/Psychology Buildings after hours. (At the time of Dr. Akom's arrest, after hours construction work on the telecommunications upgrade was limited to the Humanities and the Ethnic Studies/Psychology Building.)

During interviews with most subjects, including Africana Studies Chair Dorothy Tsuruta, Africana Studies Professor Matthew Professor Shenoda, and College of Ethnic Studies Dean Kenneth Monteiro, information was sought regarding staff, students and faculty who regularly work late in the Ethnic Studies/Psychology and Humanities buildings.

The purpose of these inquiries was to identify employees and/or students and staff in the two buildings undergoing construction at the time of the Dr. Akom incident who would have had a high likelihood of experiencing after-hours contacts with the campus police or security guards assigned to construction sites. By interviewing this group of individuals,

investigators sought to find out whether security guards assigned to the construction sites and/or campus police officers stopped and sought proof of identity, or otherwise exercised their respective authority, in a racially neutral fashion.

The investigators also interviewed staff members designated as building coordinators who received information regarding the TIS project and were deemed responsible for disseminating that information to the occupants of buildings undergoing work.

During interviews with most subjects, including Africana Studies Chair Dorothy Tsuruta, Africana Studies Professor Matthew Shenoda, and College of Ethnic Studies Dean Kenneth Monteiro, the investigators sought information regarding staff, students and faculty who were known to have had encounters with campus police or with security guards that they felt constituted racial profiling or racial discrimination.

Investigators asked Professor Shenoda to distribute the investigators' contact information to several students from whom he had heard complaints of racial profiling by campus police. Professor Shenoda reported to the investigators that he had distributed the contact information to the students in question. None of the students in question contacted the investigators.

Investigators placed calls to the executive director of the SFSU Associated Students, leaving messages with the executive director's assistant, in order to contact student government leaders who might be knowledgeable about the issue of racial profiling on campus. These calls were not returned.

Africana Studies Chair Dorothy Tsuruta was asked to discover and/or provide the identity of two faculty members, one Caucasian and one African American, who, according to her, said they had differing experiences with campus police regarding after hours identification requests. Tsuruta said she did not know the names of the individuals but that she would make an effort to discover their identity and relay that information to the investigators. The investigators provided Chair Tsuruta with their business cards and she pledged to distribute the information to the individuals in question once she was able to identify them. Likewise, Chair Tsuruta agreed to distribute the investigators' contact information to student organizers of a campus meeting that occurred the day after Dr. Akom's arrest, where students, faculty and staff shared information about alleged incidents of racial profiling. No information was provided in response to these efforts.

The investigators reviewed comments made by 1,223 signatories to an on-line petition in defense of Dr. Akom to determine if any of the signatories claimed to have experienced racial profiling at the hands of the Wackenhut security guards or campus police. Three signatories made such comments on the petition. The investigators were able to contact one and interview her. Her experiences were, by her own admission, not definitively racial profiling and could be reasonably interpreted to not constitute racial profiling. The other two individuals either did not have readily available contact information or did not return phone calls.

The investigators' efforts did produce some leads. Eleanor Taylor, a graduate student in the Psychology Department contacted the investigators after speaking to McDermid and receiving the investigators' contact information from him; Austin Long-Scott, a journalism professor, contacted the investigators in response to a message left with Edna Lee, the department manager for the journalism department; and Saul Steier, Chair of the Humanities department, responded to messages left on his voicemail and with the humanities department manager, Annette Speed.

The investigators did not receive any response as a result of the college-wide emails sent by Dean Monteiro and Assistant Dean Pomies,

even though the investigators extended the time period of the inquiry to give faculty and staff time to respond after returning to campus after the break between the Fall and Spring semesters.

As a way of gauging the record of the Department of Public Safety on issues of racial discrimination, and specifically racial profiling, the investigators requested from DPS Chief Wible records of all allegations of improper conduct, including discrimination complaints, for the last five years. Chief Wible gave the investigators summary information regarding these complaints, the method by which they were investigated and the outcome of the investigations.

IV. FACTUAL FINDINGS

A. The University's Policy Regarding Entering Campus Buildings After Closure

University Executive Order #94-17 is the University's Policy on Closure of Campus Buildings. The policy became effective in December of 1994. The policy states that all buildings except the Library will be secured at 11:00 p.m. on weekdays and 5:30 p.m. on weekends. Under the section "Weekend and Holiday Access", the policy states that identification is required to remain in the buildings after hours.

The Campus Security Report has a section entitled “Policies and Procedures Concerning Security, Access and Maintenance of Campus Facilities.” That section states, in pertinent part:

All buildings except the library will be secured by the Department of Public Safety by 11:00 P.M. on weekdays and by 5:30 P.M. on weekends per University Executive Order #94-17. We recognize that there will be some need for after hour and weekend access to buildings. After hours, a faculty or staff I.D. is required... .

According to Chief Wible, the Campus Security Report is distributed to faculty at new faculty orientations. Chief Wible states that she always discusses building security during the orientation, and provided documentation showing that Dr. Akom attended a new faculty orientation in August of 2004. Wible further noted that a post card is mailed annually in September to all faculty, staff and students, directing those individuals to the Security Report. The security report is also referenced annually in October on all employee paychecks, and is available online at www.sfsu.edu.

Dr. Akom does not have a key to the exterior doors of the Ethnic Studies/Psychology building. Therefore, when the building is locked, Dr. Akom must call the campus police to be let into the building. According to DPS’ stated policy, individuals will be asked for identification before being allowed to enter campus buildings when they are closed. On September 2,

2005, Dr. Akom called the campus police to be let into the Ethnic Studies building after-hours. He was let into the building without incident.

Despite the existence of the foregoing policies, most of the University faculty who the investigators interviewed did not seem to have a clear understanding of the policy for entering buildings after-hours.⁴

B. November 2004 Incident Between Dr. Akom and Campus Police – One Year Before The October 25, 2005 Incident

In early November of 2004 at approximately 11:00 p.m, Dr. Akom and Officer Troy Liddi interacted with one another in Dr. Akom's office.

⁴ Likewise, the DPS officers involved in the incident with Dr. Akom on October 25, 2005 were similarly unclear on and/or possessed inaccurate information about the existence of and exact time of the official closure of campus buildings, though they had a clear understanding of and were able to well articulate the nature of their authority and how it changed when buildings were open as opposed to when they were officially closed.

The security guard involved in the incident with Dr. Akom on October 25, 2005 also had inaccurate information about the university's official building closing time. He confused it with the beginning of the shift of work on the TIS project which is 10 p.m. instead of the correct closing time per University Executive Order #94-17, which is 11 p.m. This is mentioned because the security guard believed he had the authority to seek identification from anyone attempting to enter a building after 10 p.m. – when he believed the buildings closed – and not one hour later at 11 p.m. (It should be noted, however, that since Dr. Akom entered the building after 11 p.m. the security guard's faulty information about the closing time of campus buildings did not play into the events of October 25, 2005.)

In addition, the university's project manager for the TIS project was under the misimpression that university buildings close at 10 p.m. and not 11 p.m. as proscribed by policy.

1. Officer Liddi's Description of the Incident

Officer Liddi wrote an email regarding the November 2004 incident to Chief Wible and Lieutenant Pat Wasley on November 1, 2005, one year after the incident and a few days after the October 25, 2005 arrest of Dr. Akom.

According to Officer Liddi, he was patrolling the Ethnic Studies building and was routinely checking doors to determine if anything had been left unsecured. He came across an unlocked office (room 217). As he opened the door, Officer Liddi heard activity within the office. Officer Liddi placed his hand on his sidearm. Shortly thereafter, Dr. Akom opened the door and wanted to know what was happening. Officer Liddi explained why he was there. Both Dr. Akom and Officer Liddi were startled. After a few moments of conversation, the situation de-escalated.

After departing from Dr. Akom's office, Officer Liddi realized that he had not confirmed Dr. Akom's identity and returned to ask for his identification. Officer Liddi and Dr. Akom parted once again and "wished each other well in a cordial fashion," according to Officer Liddi. He did not document the incident at the time because he did not view it as a "negative issue."

Officer Liddi is an instructor on identifying and preventing Racial Profiling for the DPS. Officer Liddi was preparing to conduct a class in December of 2004 and thought Dr. Akom would be an “outstanding asset” for that class as a representative from the community to facilitate the “Community Presentations” portion of the schedule. Officer Liddi communicated by email with Dr. Akom following the November 2004 incident to ask for his participation in the racial profiling class, but Dr. Akom and Officer Liddi were unable to coordinate their schedules.

2. **Memo from Lieutenant Don Young Regarding November 2004 Incident**

On November 10, 2004, Lieutenant Don Young wrote a memo to Commander Kirk Gaston regarding a discussion he had with Dr. Akom on November 8, 2004.

Lt. Young and Dr. Akom discussed the interaction between Officer Liddi and Dr. Akom. Dr. Akom told Lt. Young: “I want you to know that I like Troy Liddi, and we met in a weird strange sort of way.” Dr. Akom said that he was working in his office at approximately 11:00 p.m. and heard a noise. He turned around to see his doorknob turning slowly. When Dr. Akom got to the door, he saw Officer Liddi. Both men were startled. Dr. Akom told Young that he was glad officers patrol the buildings at night, but

he felt the officer should have knocked before entering. Dr. Akom said he did not want to file a complaint against Officer Liddi. Dr. Akom's only request was that a memo be put out instructing officers to knock before entering offices. Young told Dr. Akom he would mention that to the officers.

3. Dr. Akom's Description of the November 2004 Incident

In an email dated November 4, 2004, Dr. Akom wrote the following to Dean Kenneth Monteiro regarding the incident with Officer Liddi:

I'm not pressing charges and am confident that everyone will emerge from this for the better. From where I stand, officer Troy was trying to do his job and I appreciate his effort. At the same time, it is a little unnerving from my perspective to begin seeing my door opened at 11:00pm. at night without a knock...and then having an officer scare the living b-jesus out of me by placing his hand on his holster, and the kicker is having that same officer leave and come back and ask me – in my own office mind you – for my faculty i.d... . I think there should be some protocol where officers ask everyone for their i.d. (when they enter their offices) or they don't.

[M]y plan is to have a conversation with him or his superiors, see that he is not reprimanded in any way, and hope that we can all get along better in the future... .

Nearly one year later, on October 27, 2005, Dr. Akom sent Monteiro another email which referenced the November 2004 incident. In that email, Dr. Akom stated that while he “tried to be as understanding as possible” with respect to the November 2004 incident, in light of what subsequently

occurred on October 25, 2005, he now considers the November 2004 incident to have been a “racial profiling event.”

C. The Technology Infrastructure Services (TIS) Project and The Presence and Proscribed Duties and Authority of the Wackenhut Security Guards

1. Security Guard Authority

At the time of the incident on October 25, 2005, the TIS project was underway in the Ethnic Studies building.

The project is described as follows on the SFSU Office of Capital Planning, Design and Construction website

(<http://www.sfsu.edu/~build/constructtelecom.htm>):

Technology Infrastructure Services (TIS) is a CSU-wide upgrade of the technology building infrastructure to support current technology needs and those in the years to come. Its intent is to meet minimum standards developed by the CSU's Commission on Telecommunications Infrastructure and approved by the state legislature. At SFSU, this project, run collaboratively between the Department of Information Technology (DoIT) and Capital Planning, Design and Construction (CPDC), will completely overhaul the communications infrastructure for the first time in nearly 20 years. New, state-of-the-art voice, video, and data connections to classrooms, laboratories, and offices on the main campus and at the Romberg Tiburon Center (in Marin County) will support emerging technologies for instructional programs and increase the productivity of our administrative operations.

The CPDC website indicates the project began in the Fall of 2004; it continues to this day.

At the time of the incident involving campus police and Dr. Akom, after-hours work was underway in only two buildings on campus, the Humanities building and the Ethnic Studies/Psychology building, according to Barry Jodatian, CPDC project manager. Each building had one Wackenhut security guard assigned to it. The guards wore clearly identifiable uniforms with company insignia.

The investigators drew on the special conditions section of the SFSU-CH2M Hill contract governing worksite security and the language in the subcontract for security services between CH2M Hill and the Wackenhut Corporation in gaining an understanding of the duties and authority expected of and conferred to the security guards detailed to the TIS project. The investigators supplemented this review of documents with interviews with university and CH2M Hill officials.

In the “Special Conditions” section of the SFSU-CH2M Hill contract, paragraph 1.04 titled “Building Security” states the times during which SFSU buildings are officially closed as follows: “*San Francisco State University buildings are normally closed and locked each Monday through Saturday night after 11:00 a.m. to 7 a.m. and on Sundays and State observed holidays.*”

Paragraph 1.04 further states:

*During these times, entrance is permitted only to authorized personnel, including the Contractor's work force, as approved by the University's Project Manager. **In no case shall the Contractor be allowed to prop-open exterior building doors or leave open doors unattended when the building is normally closed to the public.** [Emphasis added].*

Paragraph 1.04 B of the Special Conditions section of the contract specifically addresses the duties of the security guards assigned to the work sites. It states in its entirety:

*The Contractor shall provide a full-time private security guard to patrol the job site during times when work is being performed and campus buildings are closed and locked. The security guard shall be employed by a recognized Security Guard and Patrol Services and cleared by the University Police Department. No firearms shall be permitted. **Duties shall include, but not (sic) limited to, continuous patrol of the job site to check that exterior doors are locked, reporting to University Police any apparent unauthorized entry of building(s) and/or theft of University property.** [Emphasis added].*

The contract between CH2M Hill and Wackenhut has a "Scope" section detailing the expected powers and duties of the guards.

It states in its entirety:

Wackenhut shall provide unarmed security officer(s) to maintain building security and permit construction workers access during project work hours, Sunday through Friday, 2200 hours to 0700 hours (5 days at 9 hrs).

The associated duties include:

1. Dressing in a recognized uniform

2. Patrolling on a continuous basis the job site, generally one guard per building under construction

3. Verifying the exterior doors are closed and locked

4. Reporting any apparent unauthorized entry of buildings

[Emphasis added]

5. Reporting any theft of University property

6. No firearms shall be permitted or carried

7. Security guard is responsible for protection of building keys

8. Security personnel will carry and display approved university ID badge

Specific requirements for alarm deactivation and activation, building door locking and unlocking and sign out of applicable keys shall be at the direction of San Francisco University Campus police. The project shall be 16 months duration with periods of no construction activity in one building or the other and therefore no requirement for guard services during that time.

Neither the SFSU-CH2M Hill, nor the CH2M Hill-Wackenhut contract language, specifically define authorized and unauthorized entry in order to clarify what would trigger an “unauthorized entry” report by guards to campus police. Additionally, neither the SFSU-CH2M Hill, nor the CH2M Hill-Wackenhut contract language, specifically authorizes the security guards to verify the identity of individuals entering the buildings under construction.

During his interview with the independent investigators, the security guard who encountered Dr. Akom (Eyewitness #1) made two statements germane to the issue of his authority and obligation to verify the identity of individuals entering officially closed buildings where work was underway.

1) The security guard stated that he was expected by his supervisors at CH2M Hill to check the identification of every person entering the building after hours who was not previously verified or known to him.

2) The security guard said it was his regular practice to leave the doors to the Ethnic Studies/Psychology building propped open at all times when he was physically present in front of the building. He said he left the door open to make it easier for workers to enter and leave the building. When he was called upon to leave the area immediately adjacent to the front entrance of the building, he said he would simply close the door and it would automatically lock.

Barry Jodatian, the project manager for the University, said in an interview with investigators that security guards were not granted the specific authority to check the identification of faculty, staff and students entering buildings on campus with their own card keys. He said the security guards were also not expected by the University to verify the identification of individuals without card keys in order to allow them entry into closed buildings. That responsibility, Jodatian said, rests with campus police.

Jodatian said it was the direction of the University to CH2M Hill, both verbally and in the contract between the University and the contractor, that

the doors to buildings where work was underway were to remain closed and locked after the official closing time except when the security guard let workers in and out of the building. Jodatian said, “I recall the instruction given to them over and over in meetings: if they have a key to get in it’s assumed they are authorized to enter.” If this protocol were followed, Jodatian said, it would be unnecessary for the security guards to verify identification for persons with keys. Individuals with card keys and the ability to enter the building on their own after closing time would be automatically considered authorized. Individuals wishing to enter the locked, closed buildings and who had no card key, would be forced to follow normal university protocol and call campus police and present ID to a campus police officer before being permitted entry. (Dr. Akom had no card key and as we discussed earlier in the report followed this very process less than two months prior to the October 25 incident when he arrived after hours and found the doors to the building locked.)

Jerry Lundquist, superintendent of the job for CH2M Hill, had a different recollection of the verbal direction from the University regarding the power to verify the identity of persons wishing to enter after the building was closed. In an interview with investigators, he recalled that the University and CH2M Hill agreed upon a protocol for individuals who did

not have independent means to gain entry to a closed building where work was underway and it matched Jodatian's recollection: The guards were to deny entry and leave the person with the sole option of calling the campus police. However, Lundquist's recollection differs from Jodatian in one regard. Lundquist recalls the guards being granted the authority to request to see ID from individuals who had independent means (an electronic card key) to enter closed buildings where work was underway.

Jodatian's position is that the University did not convey to security guards the authority to verify an individual's identity in either the event a building entrant possessed independent means to enter a building (a card key) or in the event an individual did not possess such independent means.

Jodatian did, however, posit one scenario where a security guard would be justified in affirmatively requesting to see the ID of an after hours building entrant – and it substantially matches the scenario the Wackenhut guard at the Ethnic Studies/Psychology building faced on October 25 when Dr. Akom approached the open doors to the Ethnic Studies/Psychology building: If a individual were to “tag along” behind a group of authorized workers entering a building while the door to a closed building was, per the contract language, authorized to be open, a security guard would be justified

in seeking to discover the individual's identity and purpose for entering the building.

2. **University efforts to alert campus community to presence on campus of and duties and authority of Wackenhut security guards**

A project timeline obtained from the website of the SFSU Office of Capital Planning, Design and Construction (CPDC) shows that TIS work in the Ethnic Studies/Psychology building began on May 12, 2005.

Specifically, the timeline indicates TIS work began on the second floor of the building (the location of Dr. Akom's office and the site of his arrest) on October 10, 2005, fifteen days prior to the incident culminating in the arrest of Dr. Akom.

The independent investigation asked both the University Counsel for SFSU, Patricia Bartscher, and TIS project manager Barry Jodatian, for documents demonstrating how the University community – students, staff and faculty – were alerted to the presence of security guards on campus and informed about the guards' role pertaining to the TIS project. In response, University Counsel Bartscher produced a package of documents on December 12, 2005 sent by fax, and on January 10, 2005 Jodatian sent by Federal Express the same documents provided earlier by General Counsel Bartscher.

These documents show a meeting was held on April 28, 2005 with building coordinators for the College of Behavior and Social Sciences, the College of Ethnic Studies, and the College of Education, regarding work to be conducted pursuant to the TIS project in the Ethnic Studies/Psychology building. (All three colleges had faculty offices and classrooms in the building.) Representing the College of Ethnic Studies were Rosalie Alfonso and Michael Hornbuckle. Representing the College of Behavior and Social Studies were John Cleary, Andrew Roderick, and Alex Keller. Representing the College of Education were Alicia Jalipa and Seanchan Owen.

Jodatian explained in an interview that before work was to begin in a building or group of buildings, CPDC would hold an informational meeting with building coordinators for those buildings. In the case of the April 28, 2005 meeting it covered work to be conducted in the Ethnic Studies/Psychology building and the Gymnasium, which lies directly adjacent and to the east of the Ethnic Studies/Psychology building.

The day after the meeting the above-listed building coordinators were provided by email a “Building Users Fact Sheet” regarding the TIS project, a sample email to be distributed to occupants of the building, and a flyer that they could post in the building to alert occupants – faculty, staff and students – of the impending TIS project and its impact on university routine.

The User Fact sheet states that workers would be in the building from 10 p.m. to 6 a.m. with a clean up period of 6 a.m. to 7 a.m. Under item 3 “Construction Impact” it states, “*An inspector will be hired to provide quality control, necessary construction inspection, and building access to contractors. The inspector will report work status and progress to the Construction Manager. Added security will be provided during the work shift as well.*”[Emphasis added].

The sample email also states, among other items, that security guards will be present during work hours 10 p.m. to 7 a.m.

The flyer alerted occupants that there would be “*Construction in progress*” and states, “*TIS is a CSU-wide upgrade of the technology building infrastructure that will position SFSU with leading edge data, video, and voice cabling. Most work will be performed at night to minimize disruption to the occupants.*” The flyer does not mention security guards.⁵

⁵ Flyers posted at TIS upgrade projects subsequent to the events of Oct. 25 mention in more detail the requirement that building entrants possess proper university ID, but the flyers still do not mention the presence and duties of the security guards.

The investigators interviewed Alfonso and Hornbuckle. Alfonso said she had no responsibilities related to the TIS project and referred investigators to Hornbuckle⁶.

Hornbuckle could not recall specific meetings, saying only that he went to many meetings regarding the project. He said the only records he still possessed of information regarding the TIS project disseminated to the faculty of the College of Ethnic Studies were three emails, one sent on February 14, 2005, one sent during the week of May 2, 2005, and one the previous year in August. Hornbuckle said the multiple emails were the result of the project start date in the Ethnic Studies/Psychology building being delayed more than once. The existence of Hornbuckle's email to College of Ethnic Studies staff and faculty in February 2005 discussing the project indicates that the April 28, 2005 meeting for building coordinators identified by documents provided by General Counsel Bartscher and Jodatian was but one of many on the subject, some of which must have taken place previous to April 28.

Hornbuckle's February 14, 2005 email, titled "TII Infrastructure Upgrade APRIL," contains information on the scope, hours, duration and nature of the TIS project. Under the heading "*WHAT THIS MEANS TO*

⁶ Hornbuckle resigned from SFSU on July 15, 2005 and now lives in Southern California. He still possessed electronic copies of his emails pertaining to the issues under review and provided them to the investigators.

YOU,” Hornbuckle lists 8 items. Item 2 states, “*While a security person will be present while the workers are around, all PERSONAL VALUABLE ITEMS should be TAKEN HOME by faculty/staff members during this period.*” This is the only mention of security guards in the email.

After the April 28, 2005 meeting, Hornbuckle sent out the sample e-mail distributed the day after the meeting. As discussed above, the sample email mentions that security guards will be present on the worksites. Under the heading, “*Who will supervise the workers when they are on-site?*” the sample email states, “*The project includes contract supervisory personnel and security guards.*”

After checking his records, Hornbuckle confirmed that Dr. Akom was on the faculty email list to which he sent the February, 14, 2005 and the May 2, 2005 emails.

What is common to all the known written information that flowed from the administration to representatives of the colleges affected by TIS project work in their buildings, and that later flowed from these representatives to faculty and staff, is the general mention of the presence of security guards without any detailed explanation of their role or authority. Indeed, the only mention of their role appears to have been supervising TIS project workers.

Hornbuckle said he recalled information about security guards being shared at meetings with CPDC staff. He said the context of the discussion about security guards had to do with the guards monitoring the TIS project workers, specifically to safeguard faculty belongings and university property from theft. He said the issue of security guards was not mentioned prominently in the meetings. He said he could not recall if there had been any mention of the guards having the duty and authority to verify the identity of individuals entering the buildings undergoing TIS upgrade work.

John Cleary, the building coordinator for the College of Behavioral and Social Sciences, said he attended separate meetings regarding the TIS project held by the construction management firm overseeing CH2M Hill. The firm, CM Consolidated, held weekly meetings every Tuesday, Cleary said, and he attended them regularly. He said the meetings were not mandatory for building coordinators but he attended them anyway. In these CM Consolidated meetings, Cleary said he recalled discussion of the power of the Wackenhut security guards to verify the identification of individuals entering closed buildings undergoing TIS project work. He described this information being presented “very informally, nothing in writing, just that (the security guards) would be checking people going into the building, checking ID. I can’t swear to it but it’s something I kind of remember.”

Cleary said he informed the Psychology Department faculty and staff about the TIS project, including the presence of security guards and their authority to verify identification, at a faculty meeting prior to the onset of work. However, no Psychology Department faculty member interviewed for this report had a recollection of Cleary mentioning the guards or their specific authority.

Although most of the witnesses interviewed were aware of the TIS project, most did not know that security guards were posted at buildings under construction until after the incident of October 25, 2005 involving Dr. Akom. Those who did have interactions with the security guards prior to October 25 had no information about the security guards' specific authority to verify building entrants' identity and authorization to be in a building after hours.

Jamie Newton, a SFSU psychology professor; Carel Bertram, a SFSU humanities professor; Eleanor Taylor, a SFSU graduate student assistant teacher in the psychology department; Jackie Pomies, the assistant to the dean of the College of Humanities; Annette Speed, the secretary to the SFSU Department of Humanities; Marina Abalakina, a SFSU psychology professor; David Gard, a SFSU psychology professor; Dorothy Tsuruta, chair of the Africana Studies Department; Kenneth Monteiro, dean of the

College of Ethnic Studies; So Trinh, the information technology director of the College of Ethnic Studies; and Matthew Professor Shenoda, a SFSU Africana studies professor all stated during interviews with the independent investigators that they had no knowledge that private security guards had been assigned to TIS project sites nor did they have any specific information about the guards' authority.

D. The Incident on October 25, 2005

1. Dr. Akom's Attempt to Enter The Ethnic Studies Building After Hours And His Initial Contact with the Security Guard

On the evening of Tuesday, October 25, 2005 , Dr. Akom drove to SFSU with his two young daughters and parked near the Ethnic Studies/Psychology Building. Dr. Akom left his children in his locked car. He arrived at approximately 11 p.m., the time at which the building is to be closed and locked per university policy. Dr. Akom stated to the campus police that evening that he came to the campus to get a book from his office.

At the time of the incident, Dr. Akom did not have an electronic card key with which to enter the building, according to university records. Dr. Akom only had keys to enter his office, # 217, on the second floor. Less than two months earlier, on September 2, 2005, Dr. Akom came to campus after hours, found the Ethnic Studies/Psychology Building closed and locked and

followed established protocol for gaining entry. He called campus police who responded to his call, verified his ID, and let him into the building.

On October 25, 2005, Dr. Akom tried to enter a door on the north side of the building. He reportedly found the door locked, and, lacking a key, walked around to the front (south) entrance of the building⁷.

As he approached the front entrance on October 25, Dr. Akom found that the door had been propped open by the security guard as was his practice when after hours construction was underway; the security guard was physically present at the entrance. As Dr. Akom approached the front door, the security guard was posted by a set of benches to the right (east) of the open front door. Dr. Akom walked at a brisk pace into the building as the security guard called after to him to get his attention. Dr. Akom stated to campus police on October 25 that the security guard was having a conversation on his cell phone at the time he entered the building. But the security guard's cell phone records, which he turned over to the campus police and which were reviewed by the investigators, show no activity at the time of Dr. Akom's entry into the building. It is possible that Dr. Akom saw the security guard speaking on the Nextel wireless device he uses to

⁷ Investigators were informed of Dr. Akom's aborted entry during an interview with his friend and colleague, Africana Studies Prof. Matthew Professor Shenoda.

communicate with his supervisors at CH2M Hill and with construction workers. The device resembles a cell phone.

The security guard told investigators that he followed Dr. Akom up the stairs leading to the second floor where Dr. Akom maintains his faculty office. While on the stairs the security guard told investigators that he asked Dr. Akom if he “worked here.” Dr. Akom replied in the affirmative without stopping. The security guard said in his interview with the independent investigators that he followed Dr. Akom onto the second floor in order to verify his statement by requesting to see Dr. Akom’s faculty identification card. He said he followed Dr. Akom north up the hallway attempting to get Dr. Akom’s attention so that he could ask for his ID. As he did so, the security guard stated that Dr. Akom reversed course and walked back toward him at a fast pace, got within a few inches of the guard’s face and yelled at him in a irate manner, stating that he was “tired of everybody”, that the guard should “leave me the fuck alone,” and asked the guard if he “did this to everybody”. This behavior intimidated and frightened the guard. He said Dr. Akom’s behavior, which he described as “psycho,” was such that he feared Dr. Akom was about to strike him. In his interview with the investigators, the security guard said, “He told me to leave him alone and I was afraid he was going to hit me so I went downstairs and called

(Eyewitness #2, the security guard's supervisor with CH2M Hill)." Asked why he was afraid Dr. Akom might strike him, the security guard said, "Because he was very angry. He was very psycho."

The security guard left the building and called the CH2M Hill supervisor to whom he reported (Eyewitness # 2). He reported to Eyewitness # 2 the entry of a suspicious person who refused to identify himself.

The initial contact between the security guard and Dr. Akom was partially witnessed by Eyewitness #5, who in his interview with the investigators corroborated that Dr. Akom yelled at the security guard. Eyewitness #5, an electrical contractor with PNS Communications, said he was working in Room 207 when he heard someone "yelling and bitching." He went outside and saw Dr. Akom. "The professor he is yelling a bad word. What the fuck is this? Because I am black?" He described Dr. Akom's demeanor as "angry – very bad." Eyewitness # 5 said he saw Dr. Akom yelling these comments at the security guard, who at the time was leaving the second floor by way of the stairway down to the south (main) entrance. After the security guard left, Eyewitness # 5 said he saw the professor go into his office.

During his interview with investigators, the security guard stated that contrary to his statements to the police, he did not ask to see Dr. Akom's

faculty identification card. He said he intended to, and that was his sole purpose for following Dr. Akom to the second floor, but he was prevented from doing so by Dr. Akom's intimidating behavior.

Dr. Akom made a series of voluntary statements to Sgt. Parson after his arrest and later when he was being transported to the Hall of Justice in San Francisco. Without being able to talk to Dr. Akom, his police statements are the best evidence available to investigation of Dr. Akom's version of events, including the above described initial contact with the security guard.

Those statements follow:

I walked past the security guard. Four people walked by and the security guard said nothing. I walked past and the security guard said nothing. The security guard was sitting there on his cell phone. I get to the second floor and the security guard comes running up after me. The security guard asked do you work here and I said yes. The security guard turned around and went away.

At another point, Dr. Akom states:

[T]hat man [the security guard] was on a cell phone when I walked by. Four people walked by in front of me, He said do you work here and I say yes. I kept going. He came up to the top of the stairs. He said do you work here. I said yes, leave me alone man I work here. He said okay. Four people walked by and he didn't say a word. Students walked by. He never asked for an ID.

The security guard said in his interview with investigators that no one entered the building prior to Dr. Akom.

According to university policy and contract requirements with CH2M Hill, the front door should have been closed and locked at 11 p.m, the official closing time of university buildings; after that time, authorized individuals without keys would have had to alert campus police for assistance in entering buildings. Faculty and staff with card keys were deemed authorized to enter and the security guards had no authority to check their IDs, according to Jodatian.

After 11 p.m., the prime contractor, CH2M Hill and its security subcontractor, Wackenhut, were required to keep the doors closed and locked and to open them only for construction workers with appropriate worker identification badges. However, the security guard told the investigators that his practice was to keep the door open but in a locked position while he was present at his post. If he were to leave his post to assist crews elsewhere he would simply close the door and it would lock automatically.

Had the door been locked and closed as specified by university policy and CH2M Hill's contract with the university, Dr. Akom would have been denied entry and would have been required to call campus police, as he did in September, to be let into the building.

2. The Call to the Campus Police and the Resulting Dispatch of Information to Officers in the Field.

Eyewitness #2 called the campus police after getting the call from the security guard. According to the dispatch records, Eyewitness #2 made the following statement:

I have one of my security guards call me from psychology. He tried to ID somebody going in the building, he refused to present any ID and he fairly got mouthy with our security guard, went in regardless, so we have an unknown inside the building right now.⁸

The information conveyed from Eyewitness # 2 to the campus police was race-neutral. This is a strong indication that the security guard did not communicate the race of the individual to Eyewitness #2. As a consequence of the race-neutral reports of the security guard and Eyewitness #2, the dispatcher's broadcast to officers in the field does not mention the race of the individual who entered the Ethnic Studies/Psychology building.

Acting on the information from Eyewitness #2, the dispatcher broadcast the following information to the DPS officers on duty in the field:

Wackenhut security is the RP (reporting party). There's a subject who pushed his way past the security guard on psychology and is insisting on going into the building and security's attempting to detain him. Um, no clothing description. The only, it's, uh, third party information, is he's 97 (on scene) pushed his way past the security guard and they're attempting to detain him on the first floor of psychology; unknown which side of the building.

⁸ There is no mention in the dispatch records of Dr. Akom's race until after he was arrested.

In his interview with the investigators, Officer Rodgers said that hearing the phrase “pushed past” meant to him that the person entering the building in defiance of the attempts by the security guard to stop him had made actual physical contact with the security guard. In fact, according to the security guard’s statements in all interviews, both with campus police detectives and the independent investigators, Dr. Akom did not make physical contact of any kind with the security guard. Regardless, based on the dispatcher’s description of the scene, Officer Rodgers responded to the Ethnic Studies/Psychology building with a partially inaccurate idea of events in his mind.

During his interview with the investigators, the dispatcher explained that the use of the phrase “pushed past”, in his mind, did not necessarily mean physical contact. The dispatcher also read the transcript of the dispatch records from the night and early morning of the incident and confirmed that this was his only broadcast to officers regarding this incident. He also confirmed that the report from Eyewitness # 2 was the only incoming report he received about the incident.

3. **The Varying Accounts of Dr. Akom’s Initial Interaction with Officer Rodgers**

a. **Officer Rodgers**

At the time the campus dispatcher made his single broadcast, SFSU DPS Officers Brandon Broach and Brandon Officer Rodgers, and DPS Senior Sgt. Reginald Parson, were located at 19th and Holloway avenues, responding to a call of a suspicious person leaving the Library after a verbal altercation. The three campus police officers had located the suspect, a homeless student known to them from previous contacts, at 19th and Holloway avenues. After questioning him they decided to release him, according the officers’ interviews and the police report pertaining to the Dr. Akom arrest.

The officers were still questioning the Library suspect at the time of the dispatcher’s broadcast of a suspicious person entering the Ethnic Studies/Psychology. Sgt. Parson said in his interview with investigators that he directed Officer Rodgers to “break” from the immediate call and respond to the call at the Ethnic Studies/Psychology building. Officer Rodgers complied and responded to the Ethnic Studies/Psychology Building in his patrol car. Officer Rodgers said in his interview that he traveled to the Ethnic Studies/Psychology building in his patrol car with Eyewitness #4, the “ride along,” and that he arrived in less than one minute. Sgt. Parson said in

his interview that he and Officer Broach remained at 19th and Holloway avenues just long enough to finish speaking to the homeless student and release him before they immediately responded to the suspicious person call at the Ethnic Studies/Psychology Building.

When he arrived at the Ethnic Studies building, Officer Rodgers spoke briefly to the security guard. “I remember him saying he (the suspect) was a very angry man,” Officer Rodgers told independent investigators. “He told me it was a tall, black male adult, wearing a brown sweater.”

Officer Rodgers climbed the stairs to the second floor, followed by the security guard. Once he got to the second floor, Officer Rodgers said he believes the security guard left the floor prior to Rodgers’ encounter with Dr. Akom, but he isn’t sure when he left.

Officer Rodgers said he began checking doors on the second floor to see if any were unlocked. As he was turning to one side to speak to Eyewitness #4, he felt a presence behind him. He said he turned around and came face to face with Dr. Akom, whose identity was at that time still unknown to Officer Rodgers. Officer Rodgers told the independent investigators that Dr. Akom placed himself within two inches of his face and started screaming. Officer Rodgers said he had never seen nor heard of Dr. Akom prior to this encounter.

“(The) first thing he said was, ‘What the fuck is this?’” Officer Rodgers said in his interview with the investigators. “He was screaming two inches from my face, and then he said, ‘This is fucking bullshit,’ and he hit me in the chest area with two closed fists.”

Officer Rodgers said Dr. Akom’s outburst was so sudden and so intense that the officer had no time to ask him for his identification card or to say anything before Dr. Akom shoved him in the chest. “After he screamed, ‘This is fucking bullshit,’ I yelled loud(ly) to calm down and that’s all I said,” Officer Rodgers stated in his interview. Later in his interview, Officer Rodgers said he might have said ‘hello’ or ‘how are you doing?’ before Dr. Akom’s initial verbal outburst but he can not be sure. Officer Rodgers estimated that at the most five seconds elapsed between Dr. Akom screaming “this is fucking bullshit” and Dr. Akom striking him in the chest.

Asked if Dr. Akom identified himself as a professor in his initial encounter with Officer Rodgers, prior to Dr. Akom striking him, Officer Rodgers said he remembered Dr. Akom repeatedly saying he was a professor after Parson and Broach arrived and were attempting to gain control over Dr. Akom. He said that could not recall Dr. Akom mentioning it before then.

Asked to describe Dr. Akom's behavior, Officer Rodgers offered the following: "Hostile, very aggressive, kind of crazy, approximately two inches from my face screaming at the top of his lungs, angry and crazy, that's how I would describe it."

After Dr. Akom struck him in the chest, Officer Rodgers said he fell backwards and Dr. Akom tried to walk away, southward down the hallway towards the stairs to the front entrance. Officer Rodgers said he regained his footing and followed Dr. Akom, approaching him from behind and attempting to put Dr. Akom in a rear wristlock control hold. "He swung back around and we began to engage in a struggle," Officer Rodgers said. At this time, Officer Rodgers broadcast two messages over the police frequencies: Code 33 to clear the air for an emergency broadcast, and Code 148 that he had a person resisting him.

"At one point he had me pinned against the wall and he was slamming me," Officer Rodgers said, describing the continuing struggle between the two men. "He had advantage over me; he was slamming me into the wall." "After that, the struggle continued between the two of us and I was focusing on him not getting a hold of my weapons (and) keep him from gaining control over me (and) hold him until back-up arrived," Officer Rodgers explained during his interview. At one point Dr. Akom tackled Officer

Rodgers to the ground and Officer Rodgers injured his knees. “He took me to the ground,” he said.

Parson and Broach arrived on the second floor less than a minute after hearing Officer Rodgers’ Code 33 and Code 148 broadcast.

b. Dr. Akom

After his arrest, Dr. Akom denied assaulting Officer Rodgers and claimed that Officer Rodgers “charged” him. Dr. Akom also gave the following statement regarding the incident while in the police car:

When I come out of my office there is a police officer there waiting to talk to me..I say to the police officer may I help you...He says...what are you doing here...I said I work here I’m a professor here. Before I know it, this police officer is pushing me trying to put my hands behind my back...I tell him why are you putting my hands behind my back...I’m a professor...I work here...I’m getting my books out of my office... .⁹

c. Eyewitness #2

Eyewitness #2 is a Construction Manager for CH2MHill. He was the person who got the call from the security guard regarding Dr. Akom and called the campus police. Eyewitness #2 went to the second floor of the

⁹ The foregoing statements came from Sergeant Parson’s digital audio recording.

Ethnic Studies building after contacting the campus police and witnessed the incident.¹⁰

According to Eyewitness #2, Officer Rodgers was attempting to question Dr. Akom and Dr. Akom was shouting and positioning himself close to Officer Rodgers. Officer Rodgers made repeated attempts to calm Dr. Akom down. Dr. Akom pushed the officer hard in the chest, first with his right hand and then with both hands. Officer Rodgers then tried to grab one of Dr. Akom's arms to restrain him. Dr. Akom shoved Officer Rodgers again and both Officer Rodgers and Dr. Akom ended up on the floor at some point. They fought for approximately one minute before the back-up officers arrived. Dr. Akom repeatedly said, "this is racism", and "this is discrimination" during the altercation. Eyewitness #2 did not see Dr. Akom pin or slam Officer Rodgers against the wall, but felt that Dr. Akom was "controlling" the fight.

In his videotaped police interview, Eyewitness #2 stated that he heard Officer Rodgers say "something about identification", and Dr. Akom got irate at the request for identification and said "leave me alone," "this is my office." Eyewitness #2 also stated in the interview that Dr. Akom first

¹⁰ Eyewitness #2 was one of the witnesses who would not cooperate with the investigators. Therefore, the following information was gathered from statements Eyewitness #2 made to the police after the incident.

pushed Officer Rodgers after Officer Rodgers requested Dr. Akom's identification. That information was not contained in Eyewitness #2's initial written statement.

d. Eyewitness #3

Eyewitness #3 is a Superintendent for PNS Communications. He was with Eyewitness #2 when Eyewitness #2 got the call from the security guard, and went up to the second floor of the Ethnic Studies building with Eyewitness #2.¹¹

When Eyewitness #3 first saw Dr. Akom and Officer Rodgers, Officer Rodgers was saying "calm down" and Dr. Akom was saying "I'm a professor", "I just came into my office to get some books", "Why are you harassing me?" Eyewitness #3 then saw Dr. Akom throw some papers or books to the ground and Dr. Akom shoved Officer Rodgers. Officer Rodgers then tried to grab Dr. Akom's arm and Dr. Akom pushed the officer again. Then Dr. Akom and Officer Rodgers ended up "wrestling" and Dr. Akom was "dominating" the officer. Eyewitness #3 perceived Dr. Akom as being "irate" and "out of control." Eyewitness #3 claims Dr. Akom pulled his arm back like he was going to punch Officer Rodgers when Officer

¹¹ Eyewitness #3 was one of the witnesses who would not cooperate with the investigators. Therefore, the following information was gathered from statements Eyewitness #3 made to the police after the incident.

Rodgers grabbed Dr. Akom from behind after Dr. Akom tried to walk away. At some point during the altercation, Dr. Akom and Officer Rodgers ended up on the floor. Dr. Akom asked the witnesses, “Are you videotaping this!?” Officer Rodgers called for back-up after Dr. Akom had pushed him and was trying to walk away.

e. Eyewitness #4

Eyewitness #4 was on a “ride along” with Officer Rodgers on the night of October 25, 2005. Eyewitness #4 and Officer Rodgers are long-time acquaintances who went to high school together.¹²

When Eyewitness #4 and Officer Rodgers got to the second floor of the Ethnic Studies/Psychology building, Officer Rodgers began checking rooms for the then unidentified man who had entered the building. Dr. Akom came out of one of the offices with a handful of books. Officer Rodgers asked, “What are you doing here?”, “What’s going on?” Dr. Akom seemed “pissed” and got into Rodger’s face and said, “This is fuckin’ bullshit. I work here.” “Why is everyone askin’ me why I’m here?” Officer Rodgers told Dr. Akom to calm down. Dr. Akom threw his books on the floor and shoved Officer Rodgers “super hard.” Officer Rodgers called for

¹² Eyewitness #4 was one of the witnesses who would not cooperate with the investigators. Therefore, the following information was gathered from statements Eyewitness #4 made to the police after the incident.

back-up. Dr. Akom stormed off towards the security guard. Officer Rodgers tried to stop Dr. Akom by grabbing him from behind. Dr. Akom spun around and the “wrestling” started. Officer Rodgers was “losing pretty much the whole time.” Officer Rodgers tried to hold Dr. Akom’s hands and yelled, “calm down”, “stop resisting.” Dr. Akom was yelling, “this is L.A. shit!”. Officer Rodgers hit his head on the wall while he was on the floor trying to hold onto Dr. Akom.

According to Eyewitness #4, Dr. Akom did not say he was a professor until after he “beat up” Officer Rodgers. Eyewitness #4 thought Dr. Akom was a “crackhead.”

f. Eyewitness #5

Eyewitness #5 is an electrical contractor for PNS Communications. He was working in Room 207 of the Ethnic Studies building at the time of the incident.

Eyewitness #5 heard someone “yelling and bitching” and looked out into the hallway of the second floor. He saw Dr. Akom standing in the hallway. Eyewitness #5 told the investigators , “The professor he is yelling a bad word. What the fuck is this? Because I am black.” Eyewitness #5 looked in the opposition direction and saw the security guard walking down

the stairs to the first floor. Eyewitness #5 did not hear what, if anything, the security guard said to Dr. Akom.

Eyewitness #5 went back into room 207. He came out of the room again after seeing several people rushed by the room. He then saw Officer Rodgers and the security guard checking doors on the second floor. When Officer Rodgers came upon the office which Dr. Akom was in, he asked, “What are you doing here? Dr. Akom said, “This is my fucking office” and “I’m a professor here.” Eyewitness #5 did not hear Officer Rodgers ask for Dr. Akom’s identification. Officer Rodgers tried to calm Dr. Akom down.

Eyewitness #5 contends that Dr. Akom pushed Officer Rodgers first by shoving Officer Rodgers’ chest with two hands and causing Officer Rodgers to fall to the ground and against the wall. Once Officer Rodgers fell down, Dr. Akom “just stood there” and did not do anything. Officer Rodgers called for back-up after he fell to the floor and tried to pull Dr. Akom to the floor with him.

Eyewitness #5 believes Dr. Akom and Officer Rodgers talked for approximately two minutes before the shove occurred. Eyewitness #5 states that Dr. Akom said he was a professor and “this is my office” before the physical altercation between Dr. Akom and Officer Rodgers began. Eyewitness #5 does not recall anyone asking for Dr. Akom’s identification.

Eyewitness #5 also saw Dr. Akom holding books when he came out of his office and saw him throw down the books before the altercation started¹³. Eyewitness #5 does not recall what Officer Rodgers said other than “calm down.” Dr. Akom was yelling and seemed angry throughout the incident.

g. Eyewitness #6

Eyewitness #6 is an electrical contractor for PNS Communications. He was working in Room 207 of the Ethnic Studies building with Eyewitness #5 at the time of the incident.¹⁴

Eyewitness #6 heard someone yelling in the hallway and using “unacceptable words”, such as “fucking.” When he came out of the room, he saw Officer Rodgers and Dr. Akom. Officer Rodgers was trying to calm Dr. Akom down, but Dr. Akom was yelling. Officer Rodgers was trying to tell Dr. Akom to leave the building and “show the ID.” Dr. Akom got more aggressive and said he was a professor. Dr. Akom was trying to get the witnesses to videotape the incident and was saying “This is LA police.”

¹³ Eyewitness #5 demonstrated how Dr. Akom threw the books to the floor during his videotaped interview with campus police. The eyewitness threw papers to the floor in the police interview room in a strikingly violent manner to demonstrate Dr. Akom’s high degree of agitation prior to him allegedly striking Officer Rodgers.

¹⁴ Eyewitness #6 was one of the witnesses who would not cooperate with the investigators. Therefore, the following information was gathered from statements Eyewitness #6 made to the police after the incident.

During his police interview, Eyewitness #6 demonstrated that Officer Rodgers was trying to grab Dr. Akom's arm and take him out of the building. Eyewitness #6 then demonstrated a throwing off motion by Dr. Akom, rather than a push. Then he said everything got more "physical" after that.

h. Eyewitness #1

Eyewitness #1 is a security guard who works for Wackenhut Corporation. Eyewitness #1 was interviewed twice by the police and his version of events as to what he witnessed between Dr. Akom and Officer Rodgers changed quite noticeably between the first and second police interview.

In his first police interview, Eyewitness #1 stated he and Officer Rodgers went up to the second floor to look for the then unidentified person. When Dr. Akom emerged from an office, Officer Rodgers asked who he was and what he was doing in the building. Eyewitness #1 contends that Dr. Akom stated "where's he at?" and started to walk in Eyewitness #1's direction. Eyewitness #1 further contends that Dr. Akom "went off" on Officer Rodgers, "rushed" Officer Rodgers, and pushed or shoved Officer Rodgers before the "wrestling" started. However, Eyewitness #1 did not make these statements in his police interview until some prodding by the

police interviewers. Earlier in the interview, Eyewitness #1 made perplexing comments such as, “[Eyewitness #2] saw everything...I wasn’t there... . I was just there when the wrestling started... . when he started pushing the officer *or whatever he did.*” (emphasis added.)

In his second police interview, Eyewitness #1 was asked to demonstrate the initial interaction between Dr. Akom and Officer Rodgers. Eyewitness #1 demonstrated that Dr. Akom tried to come toward Eyewitness #1 by passing Officer Rodgers, Officer Rodgers then tried to grab Dr. Akom, who then pushed Officer Rodgers away, and then the “wrestling” started.

During his interview with the independent investigators, Eyewitness #1 clarified his statements to police and stated that he most likely did not see the initial physical contact between Dr. Akom and Officer Rodgers. He said he was receiving multiple calls over his Nextel wireless communication device at the time from TIS project contractors seeking his help in gaining access to buildings or other areas of campus and was distracted when the actual fight began. He remembers witnessing Officer Rodgers and Dr. Akom “wrestling” and he also remembers seeing Officer Rodgers grabbing Dr. Akom as the professor was walking down the hallway toward where Eyewitness #1 was standing in a manner that led the witness to believe Dr. Akom was coming after him. But he is not confident he saw the initiating

physical contact between the two men. And, he said, he left very shortly after the fight began to answer the calls he was receiving on his Nextel wireless device. He said he passed Sgt. Parson and Officer Broach coming up the stairs to the second floor when he was leaving.

Eyewitness # 1 did say however that he witnessed the initial verbal interaction between Dr. Akom and Officer Rodgers and he describes it substantially as all the other witnesses: Dr. Akom was inside the officer's personal space and yelling at him while the officer asked Dr. Akom to calm down.

i. Eyewitness #7

Eyewitness #7 is a student at SFSU. He met Dr. Akom for the first time approximately one year ago when Dr. Akom spoke at a meeting for a student group called "COR" (Career Opportunities in Research) of which Eyewitness #7 is a member.

On the night of the incident, Eyewitness #7 was going to the COR office in room 237 to study. He entered the building through the south entrance and took the stairs to the second floor. When he got to the second floor, he saw Dr. Akom and Officer Rodgers in the hallway. Dr. Akom was holding books and saying something about being "frustrated" and the "second time." Eyewitness #7 saw Dr. Akom drop the books and walk away

from Officer Rodgers. By that point, Eyewitness #7 had walked past Dr. Akom and Officer Rodgers and had his back turned away from them. Eyewitness #7 believed Dr. Akom was frustrated and agitated when he was talking to Officer Rodgers, but Eyewitness #7 thought the situation was “deescalating” when he passed the two of them. However, after his back was turned, Eyewitness #7 started to hear yelling and turned around to see Dr. Akom and Officer Rodgers “wrestling” on the floor. Eyewitness #7 claims that Dr. Akom verbally identified himself as a professor to Officer Rodgers. Eyewitness #7 could not remember hearing any commands from Officer Rodgers.

j. **Two Possible Versions of Events Based on the Witness Statements.**

The witness statements provided to campus police and the independent investigators support with equal force two possible versions of Dr. Akom’s initial interaction with Office Officer Rodgers.

They are as follows:

Scenario no. 1: Dr. Akom steps out of his office, sees Officer Rodgers, and has a verbal exchange with Officer Rodgers. Officer Rodgers then attempts to inquire about Dr. Aklom’s authorization to be in the building and Dr. Akom becomes irate and yells at Officer Rodgers, using

profanity. Dr. Akom throws down his books, shoves Officer Rodgers without provocation, and then attempts to leave the scene. Officer Rodgers follows behind Dr. Akom, attempts to establish a rear wrist lock, but fails to execute the maneuver effectively. Dr. Akom swings around on Officer Rodgers and the two men engage in a physical confrontation described by the witnesses as “wrestling” in which Dr. Akom gets the upper hand.

Scenario no. 2: Dr. Akom steps out of his office, sees Officer Rodgers, and has a verbal exchange with Officer Rodgers. Officer Rodgers then attempts to inquire about his authorization to be in the building. Dr. Akom becomes irate and yells at Officer Rodgers, using profanity. Dr. Akom throws down his books, walks past Officer Rodgers and attempts to leave. Officer Rodgers follows Dr. Akom and attempts to detain him by establishing a rear wrist lock on Dr. Akom, but fails to execute the maneuver effectively. Dr. Akom resists Officer Rodgers attempts to detain him with the rear wrist lock, Dr. Akom swings around on Officer Rodgers and the two men engage in a physical confrontation described as wrestling in which Dr. Akom gets the upper hand.

The critical difference between the two scenarios is that in version one, Dr. Akom shoves the officer without provocation. In version two, Dr. Akom attempts to leave and the officer seeks to physically prevent Dr.

Akom from leaving which then ignites a physical confrontation. The first version is essentially Officer Rodgers' version of what took place, which is supported by a majority of witness statements. The second version derives in varying degrees from other witnesses statements, though in some cases it is unclear if the witnesses are confusing the interaction between Dr. Akom and Officer Rogers that took place with the first thing they personally saw.

One of the critical questions to be addressed in the conclusions section of this report is whether, under either scenario, Officer Rodgers acted appropriately or engaged in racial profiling.

4. The Sequence of Events after the Arrival of the Back-Up Officers

Sergeant Parson and Officer Broach arrived on the scene to assist Officer Rodgers shortly after receiving Officer Rodgers' call for back-up.¹⁵ Both Parson and Broach observed Dr. Akom holding Officer Rodgers against the wall when they first arrived on the second floor. According to Officer Rodgers, Parson, and Broach, Dr. Akom resisted their attempts to arrest him for several minutes. Parson and Broach both reported that Dr. Akom tried to strike Broach while they attempted to arrest him. All the officers noted that Dr. Akom was stating that he was a professor and

¹⁵ Sgt. Parson and Officer Broach are African American. They were the only campus police officers on duty the night of October 25, 2005 other than Officer Rodgers.

declaring racism. The officers state that they repeatedly told Dr. Akom to “stop resisting” and to “calm down.” Broach and Officer Rodgers contend that Dr. Akom said “spray me mother fucker!” when Officer Rodgers threatened to use his “O.C. spray” against Dr. Akom.¹⁶ The officers contend that it took 4 to 5 minutes to handcuff Dr. Akom.

Most of the witnesses who were still on the second floor when Parson and Broach arrived stated that Dr. Akom resisted being handcuffed.” The witnesses vary in terms of the amount of time required to handcuff Dr. Akom. Some estimate that it took just a matter of seconds. Others claim it took a few minutes for the officers to handcuff Dr. Akom. Most of the witnesses heard Dr. Akom stating that he was a professor while the officers attempted to handcuff him.

Once Dr. Akom was handcuffed, he was taken out of the building and placed inside a patrol car. Dr. Akom and the officers stayed on the scene while arrangements were made for someone to take custody of Dr. Akom’s young children.¹⁷ Dr. Akom was eventually taken to the police station at 850 Bryant Street and held in jail until the following day.

¹⁶ The pepper spray was never used against Dr. Akom.

¹⁷ Matthew Professor Shenoda, a professor and friend of Dr. Akom’s, ultimately took charge of Dr. Akom’s children.

The officers turned on their digital audio recorders at various points during the incident. According to DPS policy, “digital audio recordings allow for accurate documentation of statements made during police-public contacts, arrests, and critical incidents...[and] serve to enhance the accuracy of officer reports and testimony in court.” The policy further states that the digital audio recorder “[s]hall be activated and remain activated in order to ensure the integrity of the recording... . [and] if an officer fails to record the entire contact...the officer shall file a written report explaining why the recording was interrupted or terminated.” The policy also provides that officers are “[e]ncouraged to activate their recorders at any time that the officer reasonably believes that a recording of an on-duty contact with a member of the public may be of future benefit.” However, the policy also states that “at no time should an officer jeopardize his/her safety in order to activate their recorder.”

Officer Rodgers and Broach did not activate their digital audio recorders until after Dr. Akom had been arrested and they were outside of the Ethnic Studies/Psychology building. Sgt. Parson activated his digital audio recorder while still on the second floor of the Ethnic Studies building, and Parson’s recorder picked up the most clear audio recording of events.

Officer Rodgers was initially treated at the scene for his injuries and taken to Seton Medical Center in the early morning hours of October 26. According to the records provided by the DPS, Officer Rodgers suffered a laceration to his right thumb, which did not require stitches; bruises to both sides of his head; and slightly swollen knees. Officer Rodgers was released to return to work on October 28, 2005. Dr. Akom was apparently not injured as a result of the incident.

5. The Investigative Tactics of the Department of Public Safety

On the night of the incident, after Dr. Akom was in custody, the police distributed forms on which the seven eyewitnesses were asked to describe their personal narrative of the incident. Contrary to our understanding of basic investigative practices, DPS allowed six of the seven witnesses to sit in the same room or nearby each other and talk among themselves as they filled out their witness statements.¹⁸ We believe that failing to separate witnesses when they are writing or relating their recollection of events may have the tendency to contaminate witness recollections. This practice may also exert a

¹⁸ The three eyewitnesses who agreed to be interviewed by the investigators – Eyewitness nos. 1, 5, and 7 - reported that the witnesses were permitted to write their statements in the presence of other witnesses. Eyewitness #1 stated that he actually spoke with other witnesses regarding the incident prior to writing his statement.

subtle pressure on some witnesses to agree with a prevailing narrative being discussed by the group.

One indication that this process may have contaminated witness recollections is the conflicting testimony of the security guard, whose written statement makes clear that he saw Dr. Akom shove Officer Rodgers without provocation. But by the end of two follow-up interviews with campus police and his interview with the independent investigators, it became relatively clear that the security guard did not see the initial physical contact between the professor and the officer because he was distracted, taking calls on his Nextel wireless communicator from contractors at various locations on campus.

In addition, when DPS detectives interviewed Eyewitness # 2, the CH2M Hill supervisor, they allowed him to read from a document when detailing his recollection of events.¹⁹ The detectives also allowed a corporate representative of CH2M Hill to sit in on the interview which may have also exerted pressure on the witness to shade his recollections more favorably toward the police, especially since the corporate representative made a point

¹⁹ The investigators still do not know what this document contained or why the witness was allowed to read from it during his interview. A review of the DVD of the interview provided by campus police shows that the witness has the document face down in front of him when he starts the interview but he turns it over and appears to be reading from it at the place in his narrative when he is about to describe the initial interaction between Dr. Akom and Officer Rodgers.

of mentioning to the DPS detectives before the interview began that his son is a police officer in another state.

Also, the campus police interviewed an eyewitness (Eyewitness # 6) with significantly limited proficiency in English who would have benefited greatly from having an interpreter. The witness is from the former Soviet republic of Georgia, and English is his third language.

E. DPS' Policy on Racial Profiling and Training

DPS has a written policy on “Bias Profiling.” The policy states that its purpose is to “unequivocally state that racial and ethnic profiling in law enforcement are totally unacceptable... .” The policy further states that “[c]itizens will only be stopped or detained when there exists reasonable suspicion to believe they have committed, are committing, or are about to commit a violation of the law.” (emphasis in original.)

According to Chief Wible, all campus police officers have received training in the POST approved course on racial profiling. Most of the officers received the training in 2004. Officer Rodgers completed the academy in June of 2005 and received racial profiling training at the academy. Officer Broach graduated from the academy in August of 2005 and received racial profiling training at the academy. Officers Officer

Rodgers and Broach also received additional racial profiling training during DPS' field training program for new officers. Sgt. Parson received racial profiling training through DPS in June of 2004.

According to Chief Wible, the DPS also endeavors to send all of its officers to POST-approved "Tools for Tolerance Training" at the Museum of Tolerance in Los Angeles. Wible provided the investigators with a memo dated October 8, 2002 showing that all sworn personnel in the department, including Sgt. Parson, attended the Tools for Tolerance Training in 2002.

F. Incidents When Campus Police Or Security Guards Did Not Ask For Identification From Faculty Or Students While Buildings Were Closed.

Investigators spoke to various faculty members and students who had experiences with campus police and security guards when entering or exiting campus buildings that were closed. We did so to ascertain whether campus police or the TIS project security guards requested persons to prove their identity and authorization to be in campus buildings in a discriminatory fashion. Despite extensive efforts to contact as many occupants of the Ethnic Studies/Psychology and Humanities buildings as possible, including mass emails to all members of the College of Humanities and the College of Ethnic Studies, the investigators were able to interview only six individuals. Of those six, three were Caucasian, two were African American, and one

was Asian American. As detailed below, two Caucasians and one African American had the experience of not being asked for identification by a security guard when entering closed buildings. Both a Caucasian and an African American had the experience of arriving on campus when buildings were closed and having to show ID to campus police in order to be allowed entry into buildings. Both a Caucasian and an African American had the experience of encountering campus police late at night while in their offices and not being asked to show ID.

1. Eleanor Taylor

Eleanor Taylor is a graduate student in the Psychology department. Taylor works in the Library and often arrives to work before the building opens. She is regularly let into the building by a uniformed male who has never asked for her identification, even when he saw her for the first time. Taylor is not sure whether the uniformed male is a campus police officer or security guard, but she noted that he wears the same type of uniform she has seen on two other uniformed persons who come into the Library on weekends to make rounds. Taylor is Caucasian.

2. Austin Long-Scott

Austin Long-Scott is a professor in the Journalism department which is located in the College of Humanities. Long-Scott arrives at the Humanities building each day between 6:00 and 6:30 a.m. He saw two security guards working at the building during the Fall semester. Neither security guard ever asked to see his identification, even when he saw the guards for the first time. Long-Scott is African American.

3. Saul Steier

Saul Steier is the Chair of the Humanities department. Steier often works late and has entered the Humanities building after it closes. The security guard posted at the Humanities building has never asked for his identification. However, the first time the security guard saw Steier he was letting himself into the building with a key card and told the security guard he had some papers to grade. Steier is Caucasian.

4. Dorothy Tsuruta

Dorothy Tsuruta is Chair of the Africana Studies department. Tsuruta said she frequently has campus police officers come into her office when she is working late after the building is closed. However, the officers have never

asked to see her ID. She told investigators she offers to show her ID but the officers always decline. She said that she has come to the campus on weekends and forgotten her card key to enter the building. In those instances she calls campus police who respond and ask to see her faculty ID before letting her in the building. Tsuruta is African American.

Tsuruta also told the investigators that, after the incident involving Dr. Akom, some white faculty members and students told her they stay late on campus and are not bothered by campus police or asked for identification; whereas, an African American female faculty member told Tsuruta that she has been stopped and asked for identification by campus police officers.

5. Carel Bertram

Carel Bertram is a professor in the Humanities Department. Bertram told investigators she often works late in the Humanities building, even after 11 p.m., the official closing time. She said she is in the building after closing time approximately two to three times a month. She has never had any encounter with campus police or security guards after closing time.

During the Fall 2005 semester, Bertram said she was in her office until 10 p.m. approximately twice a week. During the Spring 2005 semester, she said she was in her office until 10 p.m. approximately once a week.

During the Spring and Fall semesters of 2005 Bertram said she had approximately three encounters with campus police officers. The encounters were always *before 11 p.m.* when the building officially closed. In all three encounters, the officer was female and not previously known to Bertram. In all three encounters, Bertram was in her office and the officer merely knocked on the door and said they were checking to “see who was here.” In all three encounters, the officers did not ask for an ID or ask Bertram to identify herself.²⁰

Like other witnesses interviewed, Bertram has come to campus on the weekends when the campus buildings are locked and closed. (Bertram does not have a card key in order to enter the Humanities building where her office is located.) In these instances, she has called campus police and they have responded to let her into the building. Every time, she said, the officer has requested to see her ID. Bertram said she had approximately seven such encounters and requests to see her ID during 2005.

Bertram is Caucasian.

²⁰ During his interview, Sgt. Parson, who with other senior officers is in charge of training new campus police officers, said that if a campus police officer encounters an individual in a building prior to closing time, the officer does not have the automatic right to ask for ID or otherwise stop and question a person unless he or she is behaving in a suspicious way. After the buildings officially close, Parson said campus police have a duty to ask every individual they see to show ID and explain their reason for being in the building. Since Bertram’s encounters with campus police were at a time when the building was open to the public, the absence of a request to verify her identity is consistent with campus police policy.

6. **Michael Hornbuckle**²¹

Michael Hornbuckle is the former IT Director and Building Coordinator for the Ethnic Studies department. On or about Sunday, July 17, 2005, Hornbuckle stayed late at the Ethnic Studies/Psychology building to pack up his personal belongings because he had just resigned from the University after working for the University for approximately fourteen years. Hornbuckle entered the building before it closed, but left around midnight with a box of his personal belongings in his arms. He left out of the northeast entrance of the building and was walking to his car that was parked in a corridor between the gym and Ethnic Studies building. As he was walking to his car, Hornbuckle noticed a female security guard. The security guard and Hornbuckle nodded at one another; the security guard did not ask to see his identification. Hornbuckle is not certain whether the security guard saw him leave the building, but he noticed her shortly after he exited the building. He had never seen the security guard previously. Hornbuckle is Asian American.

²¹ Hornbuckle's experience did not fall squarely within the circumstances where a security guard could have been expected to verify identification but since it was somewhat analogous to the other incidents mentioned the investigators decided to include it in this report.

G. Alleged Incidents of Differing Treatment of Minority Faculty And Students by Campus Police.

1. The Incident Involving a Student of the June Jordan School of Equity

During the course of this inquiry, the investigation learned of an incident that occurred on April 27, 2004, when an African American ninth grade student from the June Jordan School of Equity was arrested by SFSU campus police for battery and resisting arrest.²²

Because it was mentioned several times we decided to conduct a preliminary examination of the “June Jordan” matter to determine if there was any evidence suggesting that racial profiling was involved in that matter, which in turn might be indicative of a broader racial-profiling problem. To that end, the investigators attempted to obtain documents relating to the June Jordan matter, including the police report, but were limited to the following materials: 1) copies of newspaper articles discussing the incident; 2) a letter from SF Unified School District Superintendent, Arlene Ackerman, requesting an investigation of the incident; 3) documentation identifying the campus police officers involved; and 4) information from Chief Wible stating that the Dept. of Public Safety hired the former CSU Fresno Chief of Police to head the investigation, and

²² At the time of the incident, the June Jordan School of Equity was located on the San Francisco State University campus in Burk Hall.

that the officers involved were exonerated of charges of excessive force and racial discrimination.

After consideration, we concluded that the incident was not directly relevant to Dr. Akom's arrest. The same officers were not involved. The incident had already been the subject of an independent investigation. In addition, to open up a new and separate investigation into the June Jordan incident would have exceeded the original investigative mandate, prolonged the inquiry and delayed a report on this matter by several months.

However, it was made clear by more than one individual interviewed that the Dr. Akom incident reminded many of the June Jordan incident. Africana Studies Chair Dorothy Tsuruta said the incident was "a lingering sore spot on campus among people of color and white concerned faculty."

2. Incidents Reported by Professor Shenoda

Shenoda is a professor in the Africana Studies department. Several African American students have told Professor Shenoda stories about being "followed" after hours by campus police and questioned. Professor Shenoda has heard most of these stories from African American males, but has also heard similar stories from African American females and from Hispanic and Muslim students. Professor Shenoda has never heard a white student make a similar complaint.

At a meeting following the October 25 incident, “men of color” who work on the University’s maintenance crews discussed being treated “suspiciously” by campus police after hours.

After the incident, Professor Shenoda heard of another episode which occurred approximately eight years ago when a Hispanic professor allegedly had a “gun pulled on him” by a campus police officer.

3. Incidents Reported to the Investigators by Dorothy Tsuruta

Dorothy Tsuruta is Chair of the Africana Studies department. After the incident of October 25, a white history professor telephoned Chair Tsuruta. He told Chair Tsuruta that he often works late on campus, encounters campus police, and is never asked for identification. Other white faculty members have told Chair Tsuruta that when they encounter campus security officers at night, the officers seem to assume they belong on campus. Yet, an African American female faculty member told Chair Tsuruta that she has been impolitely stopped and asked for identification by campus police officers.

On the day after the arrest of Dr. Akom, there was a meeting organized by students to discuss the incident. At that meeting, Chair Tsuruta recalls an older African American male, who is a member of the custodial

staff, discussing encounters he and a colleague had with campus security. The man spoke about being stopped by campus police officers when he works late and stated that his colleague, who is Hispanic and has slurred speech, also gets stopped and treated disrespectfully by campus police officers.

H. How The Department of Public Safety Currently Handles Allegations of Wrongdoing Against Its Officers.

According to information provided by Chief Wible, there have been five instances in the past five years when investigations were conducted regarding alleged wrongdoing – such as discrimination or use of excessive force – by campus police officers. In four of the cases, internal affairs investigations were conducted by Captains and/or Lieutenants of the Department of Public Safety. In one of those four cases, the Chief of Police of CSU Sonoma and a faculty member from the SFSU College of Ethnic Studies were asked to review the internal affairs investigation. In the fifth incident, involving the student from the June Jordan School of Equity, the former Chief of Police of CSU Fresno was hired to conduct an investigation along with an African American faculty member.

In all five cases, the officers involved were either exonerated or it was concluded that the allegations of wrongdoing were “unfounded” or “not sustained”.

V. CONCLUSIONS

A. Preliminary Conclusions:

1. The University’s Policy Regarding Entry Into Buildings After They Are Closed Was Not Adequately Communicated Prior To October 25, 2005.

University Executive Order #94-17 sets forth the University’s Policy on Closure of Campus Buildings. That policy states the time that buildings will be closed, and states that identification is required to remain in the buildings after closing time on weekends and holidays. It is not clear from the policy whether the identification requirement applies on weekdays as well. However, the Campus Security Report does mention identification being required for after hours’ access to buildings on weekdays and weekends. The incident culminating in the arrest of Dr. Akom occurred on a weekday.

Although the University has a written policy relating to the closure of campus buildings, the policy was not adequately communicated to faculty prior to October 25, 2005. Most of the faculty who the investigators

interviewed did not have a clear knowledge of the existence of an after-hours policy or an understanding of the scope of the policy. Those individuals included faculty members who have worked at San Francisco State for much longer than Dr. Akom.

2. **Dr. Akom Had Knowledge About the University's Policies Regarding Building Closure Times And The Requirement To Show Identification.**

Despite the foregoing, Dr. Akom had experience and information to know and understand university policies regarding building closure times, and the after hours requirement to show identification.

His interactions with Det. Liddi in November 2004 should have made him aware that individuals in buildings after closing time are required to show identification to verify they are authorized to be in the building. Not only did Dr. Akom have an interaction with Liddi where the DPS officer asked Dr. Akom to prove his authorization to be in the building by providing some identification, but Dr. Akom had a follow-up meeting with a high-ranking member in the Department of Public Safety on the issue.

Another reminder of the university policies regarding building closure and the requirement to provide ID occurred less than two months prior to his altercation with campus police and subsequent arrest. On September 2, 2005 Dr. Akom arrived on campus after hours and found the building locked and

closed. He called campus police and was asked to provide ID to prove he was authorized to be in the building after hours. He complied with the request and was allowed entry.

These two incidents should have provided actual knowledge to Dr. Akom that buildings on campus close at certain specified times and that after the buildings are closed, individuals are required to show ID to enter or remain in campus buildings.

3. The Presence of and Role of The Security Guards Relating To The TIS Project Was Not Adequately Communicated to Members of The University Community Prior To October 25, 2005.

Although emails and flyers were distributed to faculty in the Ethnic Studies Department regarding the TIS project, it appears there was inadequate information disseminated about the presence of private security guards at buildings affected by the project, or the authority and responsibility of the security guards regarding entry into those buildings. The emails indicated that security guards were present to guard against theft during the project. Though most of the witnesses interviewed were aware of the TIS project, most did not know that security guards were posted at buildings under construction until after the incident on October 25 involving Dr. Akom.

4. Reported Inconsistent Practice Relating To Requests for Identification.

The investigation uncovered some inconsistent practices by both campus police and the Wackenhut security guards regarding requests for identification when campus buildings are closed. The inconsistent practice does not appear to be racially motivated as the investigators spoke to non-Caucasian witnesses who were not asked for their identification in certain circumstances.

5. Possible Differing Treatment of Minority Faculty and Students by Campus Police.

The investigation uncovered second hand stories of possible differing treatment of Caucasian faculty and students as compared to minority faculty and students by the campus police. The incidents reported to the investigators were second-hand, and could not be corroborated. Though it is possible that there may have been differing treatment by campus police of Caucasian versus non-Caucasian faculty and students which needs to be addressed, it would require further investigation to determine if such differing treatment actually took place.

The incident involving Dr. Akom is the second major allegation of racial profiling against campus police in two years. The other was the

incident involving the student from the June Jordan School of Equity in April of 2004.

B. Conclusions Regarding The Events of October 25, 2005 Which Culminated in the Arrest of Dr. Akom:

It is impossible to reconstruct with 100 percent accuracy what occurred on the night of October 25, 2005. As noted earlier, only three of the seven eyewitnesses agreed to be interviewed by the investigation team and, most critically, Dr. Akom, acting on advice of counsel, declined to be interviewed.

However, based on the available evidence, the investigation concludes that neither the Wackenhut security guard nor Officer Rodgers, Officer Broach, or Sgt. Parson engaged in racial profiling.

1. Dr. Akom's Interaction with the Security Guard.

The security guard violated one security provision of the contract between the University and CH2M Hill by "propping open" the door to the Ethnic Studies/Psychology building. If the door had been locked and closed per the contract, Dr. Akom would have been required to call campus police to be admitted into the building, as he did less than two months prior to his arrest.

By leaving the door open, the guard created a situation where Dr. Akom could have reasonably believed the building was still open and that he was not required to provide identification to anyone in order to enter the building. Consequently, Dr. Akom cannot be faulted for walking into the building and past the security guard. (Apparently, it was not until after Dr. Akom was in the building that the guard followed him.)

In light of the apparent failure on the part of the University to fully communicate information to the campus community about the presence and authority of the Wackenhut security guards, it is possible that Dr. Akom was not aware that private security guards were present on campus or that they possessed the authority to control entry into buildings after closing time.

However, once the security guard attempted to get Dr. Akom's attention, the available evidence indicates that Dr. Akom did not respond in a reasonable fashion to the guard's inquiry. Given his overheard comments, Dr. Akom seems to have leapt to the conclusion that he was being stopped based solely on his race. According to the available evidence, he reacted to the guard's questions in a hostile manner, preventing the guard from requesting his ID, and providing the guard with ample race neutral grounds to suspect Dr. Akom was not authorized to be in the building.

It is undisputed that the security guard asked Dr. Akom if he worked in the building and Dr. Akom said yes. It is also undisputed that the guard did not ask Dr. Akom for his identification card. During his interview with the investigators, the security guard admitted that he did not ask for Dr. Akom's identification. That statement contradicts the guard's earlier statements to campus police regarding the incident. At that time, the guard said that he did ask for Dr. Akom's identification. Later, the guard told the investigators that he intended to ask Dr. Akom for identification but could not do so because the situation became so heated that he was unable to verbally make the request. The guard said the only thing preventing him from doing so was Dr. Akom's preemptive and irate behavior. This appears to be an accurate portrayal of the guard's actions given the corroborative account of Eyewitness #5 who told the investigators that he witnessed Dr. Akom yelling at the security guard before Officer Rodgers arrived on the scene.

Based on the available evidence, it appears Dr. Akom's behavior in response to the guard's queries is the reason he was not asked for his identification.

While Dr. Akom did state that he worked at the university when he was asked by the guard, the security guard pointed out in his interview with the independent investigation that this is a claim that make.

The actions of the security guard, in following Dr. Akom up the stairs and attempting to verify his identity and authorization to enter the building, were appropriate and in accordance with his duties under the university's contract with CH2M Hill, CH2M Hill's subcontract with Wackenhut, and the general agreement about his duties and authority developed in conference between university officials and representatives of CH2M Hill. Similarly, the security guard's decision to report to his CH2M Hill supervisor the entry of a suspicious person into the Ethnic Studies/Psychology building was appropriate and in accordance with his duties as governed by the university's contract with CH2M Hill, CH2M Hill's subcontract with Wackenhut, and the general agreement about his duties and authority developed in conference between university officials and representatives of CH2M Hill.

Accordingly, we conclude that the security guard did not engage in racial profiling. In fact, evidence suggests the guard did not even mention Dr. Akom's race to his supervisor. In following Dr. Akom into the building and seeking to verify his identity, the guard acted in accordance with his job

duties, acting to protect university property and the safety of workers and other individuals in the Ethnic Studies/Psychology building.

2. **The Dispatcher Did Not Mention Dr. Akom's Race, but May Have Inadvertently Communicated Inaccurate Information to Officers in the Field.**

When the security guard called the campus police, he did not mention the race of Dr. Akom. Consequently, the dispatcher also did not mention Dr. Akom's race. However, the dispatcher inadvertently communicated inaccurate information by stating that Dr. Akom "pushed his way past" the security guard and was "insisting" on going into the building even though that was not the actual information the security guard had relayed to the dispatcher.

Officer Rodgers and Sgt. Parson told the investigators that the use of the phrase "pushed past" indicated to them physical contact had occurred between Dr. Akom and the security guard. (Officer Broach said in his interview he did not hear much of the dispatch broadcast.) It is now abundantly clear that was not the case. While we mention this point, there is no evidence that the response by campus police was in any way affected by officers possessing this inaccurate information.

Prior to the physical altercation between Officer Rodgers and Dr. Akom, the interaction between the two men was too brief for Officer

Rodgers to treat Dr. Akom in any way that appears to have been the direct result of the officer believing the professor assaulted the security guard. Independent witnesses have stated that Officer Rodgers' was merely issuing commands for Dr. Akom to "calm down" prior to the altercation beginning.

When Parson arrived on the scene with Officer Broach, Officer Rodgers had already broadcast a panicked message that he had a resistor, and when Parson first saw Officer Rodgers he was under attack by Dr. Akom, being handled like "a rag doll" against the wall of the 2nd floor Ethnic Studies/Psychology building hallway. Given the circumstances, whatever was said by the dispatcher became a moot point.

3. **Dr. Akom's Initial Interaction and Physical Altercation with Officer Rodgers.**

The question of how the physical altercation between Officer Rodgers and Dr. Akom began has been a key question throughout this inquiry. It has also been the most difficult question to answer, given the differing recollections of the eyewitnesses and the fact that we have been unable to personally interview Dr. Akom and four eyewitnesses. Also frustrating the effort were certain investigative practices employed by the campus police,

discussed above, which raise questions about the overall usefulness of their interview findings.

Complicating matters further, two of the eyewitnesses, nos. 4 and 7, have a potential personal bias, one in favor of Dr. Akom and one in favor of Officer Rodgers. Eyewitness #4, the “ride along” who accompanied Officer Rodgers on his shift the evening of Dr. Akom’s arrest, is a longtime acquaintance of Officer Rodgers, and Eyewitness # 7, the SFSU student, is an admirer of Dr. Akom. This does not mean their statements are untruthful, only that they may not be unbiased.

Of the seven eyewitnesses, a majority (four) strongly support Officer Rodgers’ version of events: Dr. Akom confronted Officer Rodgers in a physically and verbally intimidating manner, Officer Rodgers responded by asking Dr. Akom to calm down and then, unprovoked, Dr. Akom shoved Officer Rodgers in the chest with both his hands. The four eyewitnesses who support Officer Rodgers’ version are Eyewitness #2, a supervisor for CH2M Hill; Eyewitness #3, a supervisor for PNS Communications; Eyewitness # 4, the “ride-along”; and Eyewitness # 5, an electrician with PNS Communications.

Of the remaining three eyewitnesses, two said they did not see the initial physical contact between Dr. Akom and Officer Rodgers and therefore cannot say confidently who started the altercation or how it started. The third witness told campus police that Dr. Akom shoved Officer Rodgers after Officer Rodgers placed his hands on Dr. Akom's arm in order to control his movements.

Eyewitness #1, the security guard, stated during his interview with the investigators that he is no longer sure he saw the initial physical altercation between the professor and Officer Rodgers as he had stated in earlier interviews with campus police and in his written statement to campus police.

Eyewitness # 6, an electrician with PNS Communications, indicates in his interview with campus police that Dr. Akom shoved Officer Rodgers after Officer Rodgers placed his hands on the professor in order to guide the professor's movements.

Eyewitness # 7, the SFSU student, has said in all his interviews, both with campus police and with the investigators, that he had his back turned and was walking away from Dr. Akom and Officer Rodgers when the fight began.

Of those witnesses who gave unequivocal statements in support of Officer Rodgers to the campus police, only Eyewitness # 5 cooperated with the independent investigation. During his interview with the independent investigators, Eyewitness # 5 was unwavering in stating that he saw Dr. Akom shove Officer Rodgers first while the officer was trying to calm him down. He described Officer Rodgers's demeanor as calm as he was requesting that Dr. Akom calm down. When interviewed on December 5, 2005, the eyewitness was no longer working at SFSU and was no longer in the employ of PNS Communications. He had no reason to hold to a statement geared toward pleasing campus police as an institution or PNS Communications as an employer. Yet he was unequivocal in adhering to information contained in his written statement and his police interview, especially those features of his statements that have Dr. Akom attacking Officer Rodgers first while Officer Rodgers behaved in a calm and professional manner.

The overall impact of the witness statements regarding the initial interaction and altercation between Officer Rodgers and Dr. Akom, both those given to police and those given to the independent investigators, weighs heavily against Dr. Akom's claim of racial profiling, even when taking into consideration any flaws in the campus police investigation. There

is not a single witness to the initial interaction between Dr. Akom and Officer Rodgers who substantially supports Dr. Akom's version of events, that the altercation began when the officer "charged him." Eyewitness # 7 partially supports Dr. Akom but not on the critical aspect of the altercation: Who struck whom first. Eyewitness # 6 has Officer Rodgers putting his hands on Dr. Akom first but in a manner that cannot be fairly described as charging him.

The available evidence supports two likely scenarios with equal force as to how the altercation began:

- 1) Dr. Akom struck Officer Rodgers first, unprovoked.
- 2) Officer Rodgers sought to detain Dr. Akom from behind as he walked away and Dr. Akom reacted by physically resisting the officer.

Under either scenario, under established law, Officer Rodgers' actions were reasonable and did not constitute racial profiling. There is case law which supports the conclusion that Officer Rodgers was legally justified in stopping Dr. Akom if Dr. Akom acted in a belligerent or hostile manner and refused to cooperate with Officer Rodgers.

3. **Dr. Akom May Have Told Officer Rodgers He Was A Professor Before Any Physical Altercation Occurred, And Officer Rodgers Did Not Ask Dr. Akom To Show His Identification.**

Most of the witnesses heard Dr. Akom tell Officer Rodgers he was a professor before any physical altercation occurred. Officer Rodgers admits that he did not ask Dr. Akom to show his identification, because Officer Rodgers contends he did not have time to do so before Dr. Akom pushed him.

Ideally, Officer Rodgers should have asked to see Dr. Akom's identification. However, based on the available evidence it seems unlikely Officer Rodgers had time to take such action. There is no evidence that Dr. Akom ever offered to show his identification to either to the security guard or Officer Rodgers, even though Officer Broach said Dr. Akom did have his faculty identification card on his person on October 25, 2005.

4. **Although It May Have Been Helpful Had Officer Rodgers Activated His Digital Audio Recorder Earlier, It Is Not Clear That He Was In A Position To Do So.**

Had Officer Rodgers turned on his digital audio recorder at the onset of his interaction with Dr. Akom, it could have been more easily discovered what transpired between the two. However, it is not clear whether Officer Rodgers had time to turn on his recorder before the physical altercation with

Dr. Akom began. There is no policy requiring that a recorder be turned on prior to the time Officer Rodgers came into contact with Dr. Akom. Policy does not require an officer to jeopardize his physical safety in order to activate the recorder.

5. Dr. Akom's Conduct upon the Arrival of the Back-Up Officers

Based on a review of Sgt. Parson's digital audio recording of the events of Oct. 25, 2005, it is evident that Dr. Akom resisted entreaties by Sgt. Parson, Officer Broach and Officer Rodgers to calm down and submit to police custody. Parson's digital audio recording does not capture the initial moments of contact between Sgt. Parson and Officer Broach and the professor but it picks up the action shortly thereafter. Dr. Akom is still emotionally exorcised at that time and is refusing to comply with police orders to submit to being handcuffed.

6. There Is No Evidence of Racial Profiling.

Based on the available evidence we have concluded that neither Officer Rodgers nor any other member of the Department of Public Safety engaged in any racial profiling against Dr. Akom. The dispatcher did not make any reference to Dr. Akom's race. Officer Rodgers was not aware of Dr. Akom's race until he arrived at the Ethnic Studies/Psychology building

and was told by the security guard that the suspicious person was a tall, African American adult male.²³ Officer Rodgers had reasonable, non-race based grounds for stopping Dr. Akom to ask why he was in the building. The building was officially closed and Officer Rodgers had been told that a man had pushed past the security guard and refused to show identification. Dr. Akom's reported verbal hostility toward Officer Rodgers also added race neutral grounds for Officer Rodgers to question Dr. Akom's right to be in the building.

There is no evidence that Sgt. Parson or Officer Broach, who are both African American, engaged in any racial profiling of Dr. Akom. Neither Parson nor Broach was aware of Dr. Akom's race prior to encountering him in the hallway fighting with Officer Rodgers. They had received a race neutral dispatch broadcast regarding a suspect entering a campus building in defiance of a security guard's attempts to identify him and, when they first encountered that suspect, he was engaged in a serious physical altercation with Officer Rodgers. Thus, Parson and Broach had abundant race neutral grounds for subduing Dr. Akom and arresting him.

²³ There is no evidence that the security guard engaged in any racial profiling. The security guard contends that Dr. Akom got within inches of his face and said "leave me the fuck alone!" Eyewitness #5 corroborates that Dr. Akom yelled at the security guard. Thus, the security guard had a race neutral reason for calling his supervisor who then called the campus police.

There is also no evidence that the November 2004 incident between Dr. Akom and Officer Liddi was a “racial profiling event” as Dr. Akom later asserted. Based on the emails he sent after the November 2004 incident, it appears that Dr. Akom was not particularly upset by his interaction with Officer Liddi. It was not until after the incident on October 25, 2005 that Dr. Akom began to see the November 2004 in a negative light, according to his e-mail. Officer Liddi’s behavior that evening was in accordance with the DPS policy of requesting proof of identify of individuals encountered in campus buildings after hours. Officer Liddi is an experienced DPS officer who is POST certified as a Racial Profiling instructor. Officer Liddi even attempted to enlist Dr. Akom’s assistance in one of his racial profiling courses in late 2004.

The evidence also shows that Officer Rodgers, Sgt. Parson, and Officer Broach all received adequate training on racial profiling. They all understood the illegality of racial profiling and that a person may not be stopped merely due to their race.

VI. POLICY RECOMMENDATIONS

In response to the university’s request, we set forth below four policy recommendations the university might want to consider for the future.

Recommendation 1:

The University should communicate its policy regarding after-hours access to buildings in a manner which is more likely to give effective notice to faculty, students, and staff of the policy. It must also be communicated to faculty, students, and staff that they are required to show their identification when in campus buildings after-hours. Faculty, students, and staff must understand the rules governing building security and the requirement to possess and show ID upon request by campus police. (Obviously, security guards and campus police must ensure that identification policies are applied in an even-handed fashion.)

Recommendation 2:

The University should more effectively communicate to the campus community the fact that private security guards are on campus in connection with the TIS project or similar projects in the future. In doing so, the University should also communicate that the security guards have the authority to ask faculty, students, and staff to show identification.

Recommendation 3:

The University should enforce the provision of the contract with CH2M Hill requiring the contractor and its security subcontractor,

Wackenhut, to keep building doors closed and locked at all times except when admitting TIS project workers.

Recommendation 4:

The University should consider adopting a policy that ensures consistency in the procedure for investigating allegations of racial profiling and/or misconduct by campus police. This recommendation is made in light of the June Jordan incident that was noted in the report as constituting “a lingering sore spot” on campus. There should be a consistent process in place that assures an independent review of major allegations of police misconduct with the results fully communicated to the campus community.